Montana Legislative History

Chapter: 358 Session L: 2017

Bill Number: HB 77

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	X
Third Reading Bill	X
Final Version of Bill	X

House

Committee:

Judiciary

Hearing Date(s):

Judiciary:

Jan. 16, 2017
Feb. 8, 2017 (Exec. Action)

Appropriations:

Feb. 14, 2017
Feb. 15, 2017 (Exec. Action)

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Senate

Committee: Judiciary

Hearing Date(s):

March 10, 2017

March 14, 2017 (Exec. Action)

Compiler Notes

Compiled by: sg

Date: 10/18/24

Notes:

Bill Explorer - HB 77: Revise public defender system and provide for a director hired by DOA

Summary

Sponsoredby: Brodehl, Randy
(R) HD 9

Progress		
Status	**Date**	**Passed**
Introduced	02/16/17	✓
Passed (H) Committee	02/20/17	✓
Passed House	03/15/17	✓
Passed (S) Committee	04/04/17	✓
Passed Senate	04/07/17	✓
To Governor	05/01/17	✓

Draft #	LC0432
Amendment(s)	Yes
Chapter #	358
Current Status	Chapter Number Assigned
Co-Sponsor(s)	None
Drafter	Scurr, Sheri
Requester	Task Force on State Public Defender Operations
By Request Of	Task Force on State Public Defender Operations

Fiscal Note	Yes
Preintroduction Required	Yes
Category	General Bills
Subject(s)	Public Officers and Employees, State Government, Law Enforcement (see also: Criminal Procedure),
Transmittal Date	03/01/17
Return Date	04/06/17

Sections Affected	Effective Date	Qualifier
Sections 1, 46, and 49	05/08/2017	
Sections 2-45, 47, and 48	07/01/2017	

Status

Date	Action	Committee	Yes Votes	No Votes
05/08/17	Chapter Number Assigned			
05/08/17	(H) Signed by Governor			
05/01/17	(H) Transmitted to Governor			
04/29/17	(S) Signed by President			
04/27/17	(H) Signed by Speaker			
04/21/17	(H) Returned from Enrolling			
04/21/17	(C) Printed - Enrolled Version Available			
04/20/17	(H) Sent to Enrolling			
04/20/17	(H) 3rd Reading Passed as Amended by Senate		100	0
04/20/17	(H) Scheduled for 3rd Reading			
04/19/17	(H) 2nd Reading Senate Amendments Concurred		94	6
04/19/17	(H) Scheduled for 2nd Reading			
04/12/17	(H) Revised Fiscal Note Printed			
04/10/17	(H) Revised Fiscal Note Received			
04/07/17	(S) Returned to House with Amendments			
04/07/17	(S) 3rd Reading Concurred		48	1

Date	Action	Committee	Yes Votes	No Votes
04/07/17	(S) Scheduled for 3rd Reading			
04/06/17	(C) Printed - New Version Available			
04/06/17	(S) 2nd Reading Concurred as Amended		50	0
04/06/17	(S) 2nd Reading Motion to Amend Carried		50	0
04/06/17	(S) Scheduled for 2nd Reading			
04/05/17	(H) Revised Fiscal Note Requested			
04/04/17	(C) Printed - New Version Available			
04/04/17	(S) Committee Report--Bill Concurred as Amended	(S) Finance and Claims		
04/04/17	(S) Committee Executive Action--Bill Concurred as Amended	(S) Finance and Claims	18	0
03/31/17	(S) Hearing	(S) Finance and Claims		
03/25/17	(S) Taken from 2nd Reading; Rereferred to Committee	(S) Finance and Claims	48	0
03/25/17	(S) 2nd Reading Concurred		48	0
03/25/17	(S) Scheduled for 2nd Reading			
03/20/17	(H) Revised Fiscal Note Printed			
03/20/17	(H) Revised Fiscal Note Received			
03/15/17	(C) Printed - New Version Available			
03/15/17	(S) Committee Report--Bill Concurred as Amended	(S) Judiciary		

Date	Action	Committee	Yes Votes	No Votes
03/15/17	(H) Revised Fiscal Note Requested			
03/14/17	(S) Committee Executive Action--Bill Concurred as Amended	(S) Judiciary	11	0
03/10/17	(S) Hearing	(S) Judiciary		
02/21/17	(S) Referred to Committee	(S) Judiciary		
02/21/17	(S) First Reading			
02/20/17	(H) Transmitted to Senate			
02/20/17	(H) 3rd Reading Passed		98	0
02/20/17	(H) Scheduled for 3rd Reading			
02/20/17	(H) Revised Fiscal Note Printed			
02/18/17	(H) Revised Fiscal Note Signed			
02/18/17	(H) Revised Fiscal Note Received			
02/18/17	(H) 2nd Reading Passed		100	0
02/18/17	(H) Scheduled for 2nd Reading			
02/16/17	(C) Printed - New Version Available			
02/16/17	(H) Committee Report--Bill Passed as Amended	(H) Appropriations		
02/16/17	(H) Revised Fiscal Note Requested			
02/15/17	(H) Committee Executive Action--Bill Passed as Amended	(H) Appropriations	22	0
02/14/17	(H) Hearing	(H) Appropriations		
02/13/17	(H) Revised Fiscal Note Printed			

Date	Action	Committee	Yes Votes	No Votes
02/10/17	(H) Rereferred to Committee	(H) Appropriations		
02/10/17	(H) Revised Fiscal Note Received			
02/10/17	(H) 2nd Reading Passed		100	0
02/10/17	(H) Scheduled for 2nd Reading			
02/09/17	(C) Printed - New Version Available			
02/09/17	(H) Revised Fiscal Note Requested			
02/08/17	(H) Committee Report--Bill Passed as Amended	(H) Judiciary		
02/08/17	(H) Committee Executive Action--Bill Passed as Amended	(H) Judiciary	19	0
01/16/17	(H) Hearing	(H) Judiciary		
01/06/17	(H) Sponsor Rebuttal to Fiscal Note Printed			
01/05/17	(H) Sponsor Rebuttal to Fiscal Note Signed			
01/05/17	(H) Sponsor Rebuttal to Fiscal Note Received			
01/03/17	(H) Fiscal Note Printed			
01/03/17	(H) Sponsor Rebuttal to Fiscal Note Requested			
01/02/17	(H) Fiscal Note Received			
01/02/17	(H) First Reading	(H) Judiciary		
12/27/16	(H) Referred to Committee	(H) Judiciary		
12/12/16	(H) Fiscal Note Requested			

Date	Action	Committee	Yes Votes	No Votes
12/12/16	(C) Introduced Bill Text Available Electronically			
12/12/16	(H) Introduced			
12/08/16	(C) Pre-Introduction Letter Sent			
12/08/16	(C) Draft in Assembly			
12/08/16	(C) Executive Director Review			
12/07/16	(C) Bill Draft Text Available Electronically			
12/07/16	(C) Draft in Final Drafter Review			
12/06/16	(C) Draft to Drafter - Edit Review [KWK]			
12/06/16	(C) Draft in Legal Review			
12/05/16	(C) Draft to Requester for Review			
12/05/16	(C) Draft Back for Redo			
11/30/16	(C) Draft in Input/Proofing			
11/30/16	(C) Draft to Drafter - Edit Review [KWK]			
11/30/16	(C) Draft in Legal Review			
11/30/16	(C) Draft Back for Redo			
11/30/16	(C) Draft in Legal Review			
11/30/16	(C) Draft Back for Redo			
11/30/16	(C) Draft to Drafter - Edit Review [KWK]			
11/22/16	(C) Draft in Edit			
11/19/16	(C) Draft in Legal Review			

Date	Action	Committee	Yes Votes	No Votes
11/19/16	(C) Draft to Requester for Review			
11/19/16	(C) Draft to Requester for Review			
09/13/16	(C) Draft Request Received			

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Fiscal

Date	Status
04/12/17	(H) Revised Fiscal Note Printed
04/10/17	(H) Revised Fiscal Note Received
04/05/17	(H) Revised Fiscal Note Requested
02/18/17	(H) Revised Fiscal Note Signed
01/06/17	(H) Sponsor Rebuttal to Fiscal Note Printed
01/05/17	(H) Sponsor Rebuttal to Fiscal Note Signed
01/05/17	(H) Sponsor Rebuttal to Fiscal Note Received
01/03/17	(H) Fiscal Note Printed
01/03/17	(H) Sponsor Rebuttal to Fiscal Note Requested
01/02/17	(H) Fiscal Note Received

Fiscal Documents
HB0077_5.pdf
HB0077_4.pdf
HB0077_3.pdf
HB0077_2.pdf

Fiscal Rebuttals
HB0077_1.pdf

Amendments

Amendment	Condensed Version
No Amendments found	

Documents And Links

Previous Versions

HB0077_x.pdf
HB0077_6.pdf
HB0077_5.pdf
HB0077_4.pdf
HB0077_3.pdf
HB0077_2.pdf
HB0077_1.pdf

Other

None

HOUSE BILL NO. 77

INTRODUCED BY R. BRODEHL

BY REQUEST OF THE TASK FORCE ON STATE PUBLIC DEFENDER OPERATIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A DEPARTMENT-LEVEL DIRECTOR HIRED BY THE GOVERNOR TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES OFFICE UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES OFFICE; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS 2-15-104, 2-15-111, 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; AND PROVIDING FOR CONTINGENT VOIDNESS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-104, MCA, is amended to read:

"2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;

(b) department of military affairs;

(c) department of revenue;

(d) state board of education;

(e) department of labor and industry;

(f) department of commerce;

(g) department of justice;

(h) department of public health and human services;

(i) department of corrections;

(j) department of transportation;

(k) department of public service regulation;

(l) department of agriculture;

(m) department of livestock;

(n) department of natural resources and conservation;

(o) department of fish, wildlife, and parks;

(p) department of environmental quality;

(q) office of state public defender.

(2) For its internal structure, each department, except as provided by law for the office of state public defender, shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division is headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.

(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."

Section 2. Section 2-15-111, MCA, is amended to read:

"2-15-111. Appointment and qualifications of department heads -- exception. (1) Except as provided in [section 3]:

(a) At the beginning of each gubernatorial term, the governor shall appoint each department head who serves as a director as provided in this chapter.

~~(2)~~(b) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

~~(3)~~(c) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

~~(4)~~(2) The governor shall select a director on the basis of the person's professional and administrative knowledge and experience and additional qualifications that are provided by law.

~~(5)~~(3) ~~If~~ Except as provided in [section 3], if a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

~~(6)~~(4) Heads of departments who are not directors must be elected or appointed and serve and have their vacancies filled as provided by law."

NEW SECTION. **Section 3. Office of state public defender -- head.** (1) There is an office of state public defender. The head of the office is a director. The director is hired by the governor from a list of nominees submitted as provided in subsection (2). The director is not subject to confirmation by the senate and may be removed by the governor only for cause.

(2) The public defender advisory commission provided for in 2-15-1028 shall submit to the governor a list of three nominees for director of the office of state public defender. If the governor does not hire any individual from the initial list, the governor may request a second list of three nominees and shall hire the director from that list.

Section 4. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender advisory commission. (1) There is a public defender advisory commission attached to the office of state public defender established in [section 3].

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) ~~(a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~ The commission shall serve in an advisory capacity, as defined in 2-15-102, to the director of the office

of state public defender.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in ~~47-1-201~~ [section 3], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The director of the office of state public defender may call special meetings of the commission as needed."

Section 5. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender established in [section 3]:

(a) the chief public defender ~~appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ appointed as provided in 47-1-105;

(b) the ~~employees in the positions listed~~ deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the chief public defender; ~~and~~

~~(22)~~(c) the chief appellate defender ~~in the office of appellate defender~~ appointed as provided in 47-1-105; and

(d) the chief conflict defender appointed as provided in 47-1-105."

Section 6. Section 3-5-511, MCA, is amended to read:

"3-5-511. Witnesses' warrants -- state reimbursement. (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in 47-1-103, and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by

an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in ~~47-1-201~~ [section 27]."

Section 7. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of district court proceedings -- costs. (1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.

(2) Compensation for transcripts under this section is as follows:

(a) (i) Ordinary transcript - $2 per page for the original furnished to a state or local government agency, $2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(ii) Expedited transcript - $4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(iii) Daily transcript - $5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

(ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

(3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees

required by subsection (2) must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.

(4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.

(b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(c) In civil cases, all transcripts required by the county must be furnished and must be paid for by the county pursuant to subsection (2).

(5) (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the office of state public defender, as provided in ~~47-1-201~~ [section 27].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.

(6) As used in this section, the following definitions apply:

(a) "Copy" means any replication of the original transcript regardless of the medium.

(b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

(c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.

(d) "Ordinary transcript" means a transcript of all or part of the proceedings."

Section 8. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in ~~47-1-201(5)~~ [section 27], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in ~~47-1-201(5)~~ [section 27], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in ~~47-1-201(5)~~ [section 27], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in ~~47-1-201(5)~~ [section 27], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in ~~47-1-201(5)~~ [section 27], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 9. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the state tax appeal board established in 2-15-1015; and

~~(iii) the office of state public defender; and~~

~~(iv)~~(iii) the division of banking and financial institutions;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 10. Section 17-7-154, MCA, is amended to read:

"17-7-154. (Temporary) Expenditures for district courts and office of public defender. Expenditure comparisons of state resources to local government must include state expenditures for the district courts and the office of state public defender but not for the office of chief appellate defender. (Terminates June 30, 2025--sec. 7, Ch. 232, L. 2015.)"

Section 11. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing -- exceptions. (1) Except as provided in subsection (2),

fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in ~~47-1-201(5)~~ [section 27].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 12. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in ~~47-1-201~~ [section 3].

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604."

Section 13. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 14. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel to represent the minor parent."

Section 15. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 16. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel to represent the defendant without unnecessary

delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 17. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

Section 18. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ [section 27]."

Section 19. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication,

allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 20. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 21. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Commission" means the public defender advisory commission established in 2-15-1028.

(2) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

(3) "Director" means the director of the office of state public defender hired by the governor pursuant to [section 3].

(4) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)~~(5) "Office" means the office of state public defender established in ~~47-1-201~~ [section 3].

~~(5)~~(6) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the office of chief appellate defender.

~~(6)~~(7) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 22. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ director.

(2) The ~~commission~~ director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in

the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 23. Section 47-1-105, MCA, is amended to read:

"47-1-105. ~~Commission~~ Director -- duties ~~-- report~~ -- rules. (1) The ~~commission~~ director shall supervise and direct the system in consultation with the commission. In addition to other duties assigned pursuant to this chapter, the ~~commission~~ director shall:

~~(1)~~ (a) establish the qualifications, duties, and compensation of the chief public defender~~, as~~ provided for in 47-1-201, appoint ~~a~~ the chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; ~~and~~

(b) establish the qualifications, duties, and compensation of the chief appellate defender~~, as~~ provided for in 47-1-205, appoint ~~a~~ the chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender; and

(c) establish the qualifications, duties, and compensation of the chief conflict defender provided for in 47-1-118, appoint the chief conflict defender after considering qualified applicants, and regularly evaluate the performance of the chief conflict defender.

(2) The director shall establish statewide standards for the qualification and training of attorneys

providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the chief public defender, the ~~administrative director~~ administrator of the central services office established in [section 27], ~~and~~ the chief appellate defender, and the chief conflict defender;

~~(4)~~(b) review and approve any proposal to create permanent staff positions;

~~(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~ (c) establish policies and procedures for handling excess caseloads; and

~~(7)~~(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system~~;~~.

~~(8)~~(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter~~; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~(c) the number of deputy public defenders and the region supervised by each;~~

~~(d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~(e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~(h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;~~

~~(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and~~

~~(k) detailed expenditure data by court and case type~~."

Section 24. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally

disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111."

Section 25. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment

of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ central services office provided for in [section 27]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The ~~commission~~ office shall establish procedures and adopt rules to implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section."

Section 26. Section 47-1-118, MCA, is amended to read:

"47-1-118. Conflicts of interest -- chief conflict defender. (1) The ~~commission~~ director shall establish a conflicts office to ~~contract for attorneys to represent~~ to provide for the representation of indigent defendants in circumstances ~~where~~ in which, because of conflict of interest, the ~~public defender program~~ office of chief public defender or the office of chief appellate defender is unable to provide representation to a defendant.

(2) ~~The commission shall appoint a conflicts manager to oversee the office~~ The position of chief conflict defender is appointed by the director under 47-1-105 and is exempt from the state classification and pay plan as provided in 2-18-103. The ~~conflicts manager~~ chief conflict defender reports directly to the ~~commission~~ director and not to the chief public defender.

(3) The ~~conflicts manager~~ chief conflict defender may not handle cases.

~~(3)~~(4) All attorneys ~~contracted for~~ handling conflict of interest cases shall report to the ~~conflicts manager~~ chief conflict defender."

NEW SECTION. **Section 27. Central services office -- responsibilities -- department of administration to support**. (1) There is a central services office in the office of state public defender. The office

must be located in Butte, Montana. The central services office is supervised by an administrator hired by the director.

(2) The central services office shall:

(a) manage eligibility determination under 47-1-111;

(b) manage contracting under 47-1-216;

(c) manage training pursuant to 47-1-210; and

(d) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(3) The central services office shall establish for the office of state public defender:

(a) standard procedures to handle complaints about public defender performance and work with the chief public defender, chief appellate defender, and chief conflict defender to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(4) The following expenses are payable by the central services office if the expense is incurred at the request of a public defender and is authorized by the director:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(5) If the costs to be paid pursuant to subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(6) The department of administration established in 2-15-1001 shall provide central services support to the extent feasible and efficient.

NEW SECTION. **Section 28. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically

report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the offices of chief public defender, chief appellate defender, and chief conflict defender;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted with in the system, identified by region, if appropriate, and office;

(v) the number of nonattorney staff employed or contracted with in the system, identified by region, if appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) (a) The office shall report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.

(b) The office shall report to the governor and the legislative fiscal analyst for each fiscal year by

September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection was made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid.

(c) Reports under this subsection (2) must be provided in an electronic format.

Section 29. Section 47-1-201, MCA, is amended to read:

"47-1-201. Office of ~~state~~ chief public defender -- personnel -- compensation -- expenses -- ~~--~~ reports. (1) There is an office of ~~state~~ chief public defender. ~~The office must be located in Butte, Montana.~~ The head of the office is the chief public defender, who is supervised by the ~~commission~~ director.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the ~~commission~~ director. The position of chief public defender is exempt from the state classification and pay plan as provided in 2-18-103. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of ~~state~~ chief public defender ~~and to implement the provisions of this chapter~~, including but not limited to:

(a) ~~the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:~~

~~(i) an administrative director, who must be experienced in business management and contract management;~~

~~(ii) a chief contract manager to oversee and enforce the contracting program;~~

~~(iii) a training coordinator, appointed as provided in 47-1-210;~~

~~(iv)~~ deputy public defenders, as provided in 47-1-215, who are exempt from the state classification and pay plan as provided in 2-18-103;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office of chief public defender.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

~~(5) The following expenses are payable by the office if the expense is incurred at the request of a public~~

~~defender:~~

~~(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and~~

~~(b) transcript fees, as provided in 3-5-604.~~

~~(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.~~

~~(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

~~(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.~~

~~(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.~~

~~(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.~~

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.~~"

Section 30. Section 47-1-202, MCA, is amended to read:

"47-1-202. Chief public defender -- duties. (1) In addition to the duties provided in 47-1-201~~,~~ and subject to approval by the director, the chief public defender shall:

(a) ~~act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~

~~(b) assist the commission in establishing the state system and establishing the standards, policies, and~~

~~procedures required pursuant to this chapter;~~

~~(c)~~ develop and ~~present for the commission's approval~~ implement a regional strategic plan for the delivery of public defender services;

~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

~~(e)~~(b) ~~establish~~ ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services office established in [section 27];

~~(f)~~(c) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(g)~~(d) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(h)~~(e) work with the training coordinator provided for in 47-1-210 to establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(f) work with the central services office to establish procedures to handle complaints about public defender performance ~~and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;~~

~~(j) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system~~; and

~~(k)~~(g) perform all other duties assigned by the ~~commission~~ director pursuant to this chapter.

(2) The chief public defender may not maintain a client caseload."

Section 31. Section 47-1-205, MCA, is amended to read:

"47-1-205. Office of chief appellate defender -- chief appellate defender. (1) There is an office of chief appellate defender. The office of chief appellate defender must be located in Helena, Montana.

(2) (a) The ~~commission~~ director shall hire and supervise ~~a~~ the chief appellate defender to manage and

supervise the office of chief appellate defender. The chief appellate defender is appointed by and serves at the pleasure of the ~~commission~~ director. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The chief appellate defender must be an attorney licensed to practice law in the state.

(c) The position of chief appellate defender is exempt from the state classification and pay plan as provided in 2-18-103.

(3) ~~The~~ Subject to approval by the director, the chief appellate defender shall:

(a) direct, manage, and supervise all public defender services provided by the office of chief appellate defender~~, including budgeting, reporting, and related functions~~;

(b) ensure that when a court orders the office of chief appellate defender to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(1)(f)~~(1)(c) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of office of chief appellate defender personnel ~~as authorized by the appellate defender~~;

(e) contract for services as provided in 47-1-216 and as authorized by the ~~commission~~ director according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the office of chief appellate defender and submit records and reports to the ~~commission as requested through the office of state public defender~~ central services office provided for in [section 27];

(g) implement standards and procedures established by the ~~commission~~ director for the office of chief appellate defender;

(h) maintain a minimum client caseload as determined by the ~~commission~~ director;

(i) confer with the ~~chief public defender~~ director on budgetary issues and submit budgetary requests and information for the reports required by law or by the governor ~~through the chief public defender~~; and

(j) perform all other duties assigned to the chief appellate defender by the ~~commission~~ director."

Section 32. Section 47-1-210, MCA, is amended to read:

"47-1-210. Training program -- coordinator. (1) There is within the ~~office~~ central services office provided for in [section 27] a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ administrator of the central services office shall ~~appoint~~ hire the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender; and

(e) ~~apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and~~

~~(f)~~ perform other duties assigned by the ~~chief public defender~~ director."

Section 33. Section 47-1-215, MCA, is amended to read:

"47-1-215. Regional offices -- deputy public defenders -- office space. (1) The chief public defender shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) ~~Each~~ Subject to approval by the chief public defender, each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders ~~the office to assign~~ the assignment of counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(1)(f)~~(1)(c);

(d) hire and supervise the work of regional office personnel as authorized by the chief public defender;

(e) coordinate with the contract manager provided for in 47-1-216 to contract for services as ~~provided in 47-1-216 and~~ authorized by the chief public defender according to the strategic plan approved by the ~~commission~~ director;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the chief public defender as requested;

(g) implement the standards and procedures established by the ~~commission~~ director and chief public defender for the region;

(h) maintain a minimum client caseload as determined by the chief public defender; and

(i) perform all other duties as assigned by the chief public defender.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office of state public defender and may not be considered a county or city obligation."

Section 34. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services ~~-- rules~~. (1) The ~~commission~~ director, in consultation with the commission, shall establish standards for a statewide contracted services program ~~that ensures~~ to be managed by the central services office provided for in [section 27]. The director shall ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region ~~and that contracting for appellate defender services is done fairly and consistently statewide~~.

(2) There is a contract manager position in the central services office ~~The chief contract manager shall oversee the contracting program and may not maintain a client caseload~~ hired by the administrator of the central services office. The contract manager is responsible for the administrative oversight of contracting for attorney and nonattorney support for units of the office of state public defender.

(3) ~~The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state.~~ All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) (a) Except as provided in subsection (4)(b), contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(b) Contracts for legal representation of individuals appearing before the following specialty courts may be awarded based on a fixed fee:

(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;

(ii) a mental health treatment court, as defined in 46-1-1203;

(iii) a DUI court, as defined in 61-5-231;

(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or

(v) a veterans treatment court.

(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the ~~commission~~ director and without verifiable assurances that effective representation will be provided.

(5) Contracting for ~~public defender and appellate defender services~~ attorney services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel that meets the standards established by the commission;

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements in accordance with standards set by the commission.

(6) The chief public defender, deputy public defenders, ~~and the~~ chief appellate defender, and chief conflict defender shall ~~provide for contract oversight and enforcement to ensure compliance with established standards~~ supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ director shall ~~adopt rules to~~ establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

(9) The ~~commission~~ director shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The ~~commission~~ director shall ~~implement rules requiring~~ ensure that there are procedures for conducting an evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

Section 35. Section 50-20-509, MCA, is amended to read:

"50-20-509. Procedure for judicial waiver of consent. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the

consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

Section 36. Section 53-9-104, MCA, is amended to read:

"53-9-104. (Temporary) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for

in ~~47-1-201~~ [section 3], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-9-104. (Effective July 1, 2021) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying

crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 3], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 37. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary

commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 38. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as

provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel for the minor."

Section 39. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

Section 40. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of

respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ [section 3], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 41. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics -- rights. (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the

person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further

period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel for the person regardless of the person's wishes. The

person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 42. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 43. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 44. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize

the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 45. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 3], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order

has been established, the court shall make an appointment or other appropriate protective order."

NEW SECTION. **Section 46. Transition -- appointment of director of office of state public defender.** The governor shall appoint the director of the office of state public defender provided for in [section 3] no later than January 1, 2018.

NEW SECTION. **Section 47. Codification instruction -- instructions to code commissioner.** (1) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 3].

(2) [Sections 27 and 28] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [sections 27 and 28].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and codify it in the same part as [section 3];

(b) renumber 47-1-210 and 47-1-216 and codify them in Title 47, chapter 1, part 1;

(c) renumber 47-1-205 and codify it in a new part 3 in Title 47, chapter 1;

(d) renumber 47-1-118 and codify it in a new part 4 in Title 47, chapter 1; and

(e) change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2017 legislature, to reflect the new section numbers assigned pursuant to this section.

NEW SECTION. **Section 48. Contingent voidness.** If funding for public defender services organized under a department director is not provided for in House Bill No. 2 or another appropriation bill, then [this act] is void.

- END -

HOUSE BILL NO. 77

INTRODUCED BY R. BRODEHL

BY REQUEST OF THE TASK FORCE ON STATE PUBLIC DEFENDER OPERATIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A ~~DEPARTMENT-LEVEL~~ DIRECTOR HIRED BY THE ~~GOVERNOR~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY AND TEMPORARY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES ~~OFFICE~~ DIVISION UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES ~~OFFICE~~ DIVISION; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS ~~2-15-104, 2-15-111,~~ 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-111, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; ~~AND~~ REPEALING SECTION 2-15-1028, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 2-15-104, MCA, is amended to read:~~

~~**"2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:~~

~~(a) department of administration;~~

~~(b) department of military affairs;~~

~~(c) department of revenue;~~

~~(d) state board of education;~~

~~(e) department of labor and industry;~~

~~(f) department of commerce;~~

~~(g) department of justice;~~

~~(h) department of public health and human services;~~

~~(i) department of corrections;~~

~~(j) department of transportation;~~

~~(k) department of public service regulation;~~

~~(l) department of agriculture;~~

~~(m) department of livestock;~~

~~(n) department of natural resources and conservation;~~

~~(o) department of fish, wildlife, and parks;~~

~~(p) department of environmental quality;~~

~~(q) office of state public defender~~.

~~(2) For its internal structure, each department~~, except as provided by law for the office of state public ~~defender,~~ shall adhere to the following standard terms:

~~(a) The principal unit of a department is a division. Each division is headed by an administrator.~~

~~(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.~~

~~(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."~~

~~**Section 2.** Section 2-15-111, MCA, is amended to read:~~

~~**"2-15-111. Appointment and qualifications of department heads -- exception.** (1)~~ Except as ~~provided in [section 3]:~~

~~(a)~~ At the beginning of each gubernatorial term, the governor shall appoint each department head who ~~serves as a director as provided in this chapter.~~

~~(2)~~(b) ~~An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If~~

~~the senate does not confirm the appointment of a director, the governor shall make a new appointment.~~

~~(3)(c) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.~~

~~(4)(2) The governor shall select a director on the basis of the person's professional and administrative knowledge and experience and additional qualifications that are provided by law.~~

~~(5)(3) If~~ Except as provided in [section 3], ~~if~~ a vacancy occurs in the office of a director, ~~the governor shall appoint a new director to serve at the pleasure of the governor.~~

~~(6)(4) Heads of departments who are not directors must be elected or appointed and serve and have their vacancies filled as provided by law."~~

NEW SECTION. **Section 1. Office of state public defender -- head.** ~~(1)~~ There is an office of state public defender. The head of the office is a director. The director is hired by the ~~governor from a list of nominees submitted as provided in subsection (2)~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. The director is not subject to confirmation by the senate and may be removed by the ~~governor~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION only for cause.

~~(2) The public defender advisory commission provided for in 2-15-1028 shall submit to the governor a list of three nominees for director of the office of state public defender. If the governor does not hire any individual from the initial list, the governor may request a second list of three nominees and shall hire the director from that list.~~

Section 2. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender advisory commission. ~~(1)~~ There is a public defender advisory commission attached to the office of state public defender established in ~~[section 3]~~ [SECTION 1].

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) ~~(a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to~~

~~maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~ The commission shall serve in an advisory capacity, as defined in 2-15-102, to the director of the office of state public defender.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in ~~47-1-201 [section 3]~~ [SECTION 1], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The director of the office of state public defender may call special meetings of the commission as needed."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public

education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender established in ~~[section 3]~~ [SECTION 1]:

(a) the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR ~~appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ appointed as provided in 47-1-105;

(b) the ~~employees in the positions listed~~ deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

~~(22)~~(c) the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR ~~in the office of appellate defender~~ appointed as provided in 47-1-105; and

(d) the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR appointed as provided in 47-1-105."

Section 4. Section 3-5-511, MCA, is amended to read:

"3-5-511. Witnesses' warrants -- state reimbursement. (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in 47-1-103, and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a

county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 5. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of district court proceedings -- costs. (1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.

(2) Compensation for transcripts under this section is as follows:

(a) (i) Ordinary transcript - $2 per page for the original furnished to a state or local government agency, $2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(ii) Expedited transcript - $4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(iii) Daily transcript - $5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

(ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

(3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (2) must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.

(4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.

(b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(c) In civil cases, all transcripts required by the county must be furnished and must be paid for by the county pursuant to subsection (2).

(5) (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the office of state public defender, as provided in ~~47-1-201 [section 27]~~ [SECTION 26].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.

(6) As used in this section, the following definitions apply:

(a) "Copy" means any replication of the original transcript regardless of the medium.

(b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

(c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.

(d) "Ordinary transcript" means a transcript of all or part of the proceedings."

Section 6. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court

costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 7. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration

and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the state tax appeal board established in 2-15-1015; and

~~(iii) the office of state public defender; and~~

~~(iv)~~(iii) the division of banking and financial institutions;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 8. Section 17-7-154, MCA, is amended to read:

"17-7-154. (Temporary) Expenditures for district courts and office of public defender. Expenditure comparisons of state resources to local government must include state expenditures for the district courts and the office of state public defender but not for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. (Terminates June 30, 2025--sec. 7, Ch. 232, L. 2015.)"

Section 9. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing -- exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in ~~47-1-201(5) [section 27]~~ [SECTION 26].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 10. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in ~~47-1-201 [section 3]~~ [SECTION 1].

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604."

Section 11. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a

petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 12. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the minor parent."

Section 13. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 14. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 15. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage

of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

Section 16. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 17. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move

to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

SECTION 18. SECTION 46-21-111, MCA, IS AMENDED TO READ:

"46-21-111. Preservation and disposal of biological evidence obtained in criminal proceeding. (1) (a) A law enforcement agency shall preserve biological evidence that the agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(b) An agency may propose to dispose of biological evidence before the expiration of the time period described in subsection (1)(a) if the agency notifies the convicted person, the attorney of record for the convicted person, and the Montana ~~chief~~ public defender division administrator. The notification must include a description of the biological evidence, a statement that the agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period, the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

(c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

Section 19. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1],

to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 20. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

~~(1) "Commission" means the public defender advisory commission established in 2-15-1028.~~

~~(2)~~(1) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

~~(3)~~(2) "Director" means the director of the office of state public defender hired by the ~~governor pursuant to [section 3]~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION AS PROVIDED IN [SECTION 1].

~~(4)~~(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)~~~~(5)~~(4) "Office" means the office of state public defender established in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1].

~~(5)~~~~(6)~~(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION AND THE CONFLICT DEFENDER DIVISION.

~~(6)~~~~(7)~~(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 21. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ director.

(2) The ~~commission~~ director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 22. Section 47-1-105, MCA, is amended to read:

"47-1-105. ~~Commission~~ Director -- duties ~~-- report~~ -- REPORT -- rules. (1) The ~~commission~~ director shall supervise and direct the system ~~in consultation with the commission~~. In addition to other duties assigned pursuant to this chapter, the ~~commission~~ director shall:

~~(1)~~ (a) establish the qualifications, duties, and compensation of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-201, appoint ~~a~~ the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

(b) establish the qualifications, duties, and compensation of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-205, appoint ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR; and

(c) establish the qualifications, duties, and compensation of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR provided for in 47-1-118, appoint the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR.

(2) The director shall establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the ~~chief public defender, the administrative director~~ administrator of the central services office established in [section 27]~~, and the chief appellate defender, and the chief conflict defender;~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, THE

CENTRAL SERVICES DIVISION ADMINISTRATOR, THE APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND THE CONFLICT DEFENDER DIVISION ADMINISTRATOR;

~~(4)~~(b) review and approve any proposal to create permanent staff positions;

~~(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~ (c) establish policies and procedures for handling excess caseloads; ~~and~~

~~(7)~~(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system~~.~~; AND

(E) EXAMINE WORKLOADS AND WORKLOAD STANDARDS FOR ALL LEVELS WITHIN THE OFFICE OF STATE PUBLIC DEFENDER AND INCLUDE ITS FINDINGS IN THE BIENNIAL REPORT PROVIDED FOR IN [SECTION 28].

~~(8)~~(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter~~; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~(c) the number of deputy public defenders and the region supervised by each;~~

~~(d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~(e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~(h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;~~

~~(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and~~

~~(k) detailed expenditure data by court and case type~~."

Section 23. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111.

(3) BY AUGUST 1 OF EACH YEAR, THE STATE TREASURER SHALL TRANSFER THE UNENCUMBERED BALANCE IN THE PUBLIC DEFENDER ACCOUNT TO THE STATE GENERAL FUND."

Section 24. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment.

If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~

central services ~~office~~ DIVISION provided for in ~~[section 27]~~ [SECTION 26]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) THE CENTRAL SERVICES DIVISION SHALL REVIEW ALL APPLICATIONS FOR COURT-APPOINTED COUNSEL IN ORDER TO DETERMINE WHETHER APPLICANTS ARE ELIGIBLE. THE CENTRAL SERVICES DIVISION SHALL ENSURE THAT DETERMINATIONS BASED ON PRESUMPTIVE ELIGIBILITY, INCOME AND ASSETS, AND SUBSTANTIAL HARDSHIPS ARE DONE IN A CONSISTENT MANNER THROUGHOUT THE STATE. THE CENTRAL SERVICES DIVISION SHALL VERIFY INFORMATION ON THE APPLICATION FORM FOR ALL APPLICANTS SEEKING COUNSEL UNDER SUBSECTION (3)(B).

~~(6)~~(7) The ~~commission~~ ~~office~~ CENTRAL SERVICES DIVISION shall establish procedures and adopt rules to implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is DONE TIMELY AND IS fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section."

Section 25. Section 47-1-118, MCA, is amended to read:

"47-1-118. Conflicts of interest ~~-- chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR. (1) The ~~commission~~ director shall establish a conflicts ~~office to~~ DEFENDER DIVISION ~~contract for attorneys to represent~~ to provide for the representation of indigent defendants in circumstances ~~where~~ in which, because of conflict of interest, the ~~public defender program~~ ~~office of chief public defender or the office of chief appellate defender~~ PUBLIC DEFENDER DIVISION OR THE APPELLATE DEFENDER DIVISION is unable to provide representation to a defendant.

(2) ~~The commission shall appoint a conflicts manager to oversee the office~~ The position of ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR is appointed by the director under 47-1-105 and is exempt from the state classification and pay plan as provided in 2-18-103. The ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR reports directly to the ~~commission~~ director and not to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) The ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR may not handle cases.

~~(3)~~(4) All attorneys ~~contracted for~~ handling conflict of interest cases shall report to the ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR."

NEW SECTION. **Section 26. Central services ~~office~~ DIVISION -- responsibilities -- department of administration to support**. (1) There is a central services ~~office~~ DIVISION in the office of state public defender. The ~~office~~ DIVISION must be located in Butte, Montana. The central services ~~office~~ DIVISION is supervised by an

administrator hired by the director.

(2) The central services ~~office~~ DIVISION shall:

(a) manage eligibility determination under 47-1-111;

(b) manage contracting under 47-1-216;

(c) manage training pursuant to 47-1-210; ~~and~~

(D) PROVIDE ADMINISTRATIVE SUPPORT TO THE DIRECTOR; AND

~~(d)~~(E) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(3) The central services ~~office~~ DIVISION shall establish for the office of state public defender:

(a) standard procedures to handle complaints about public defender performance and work with the ~~chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(4) The following expenses are payable by the central services ~~office~~ DIVISION if the expense is incurred at the request of a public defender and is authorized by the director:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(5) If the costs to be paid pursuant to subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(6) The department of administration established in 2-15-1001 shall provide central services support to the extent feasible and efficient.

NEW SECTION. **Section 27. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the ~~offices of chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted with in the system, identified by region, if appropriate, and office;

(v) the number of nonattorney staff employed or contracted with in the system, identified by region, if appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the ~~office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) ~~(a)~~ The office shall report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, the number of new cases opened, the number of cases closed, the number of cases that remain open and active,

the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. THE REPORT MUST BE PROVIDED IN AN ELECTRONIC FORMAT.

~~(b) The office shall report to the governor and the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection was made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid.~~

~~(c) Reports under this subsection (2) must be provided in an electronic format.~~

Section 28. Section 47-1-201, MCA, is amended to read:

"47-1-201. ~~Office of state chief public defender~~ PUBLIC DEFENDER DIVISION -- personnel -- compensation -- expenses ~~-- reports~~. (1) There is ~~an office of state chief public defender~~ A PUBLIC DEFENDER DIVISION. ~~The office must be located in Butte, Montana.~~ The head of the ~~office is the chief public defender~~ DIVISION IS THE PUBLIC DEFENDER DIVISION ADMINISTRATOR, who is supervised by the ~~commission~~ director.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state. The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The position of ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire or contract for and supervise other personnel necessary to perform the function of the ~~office of state chief public defender~~ PUBLIC DEFENDER DIVISION ~~and to implement the provisions of this chapter~~, including but not limited to:

(a) ~~the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:~~

~~(i) an administrative director, who must be experienced in business management and contract management;~~

~~(ii) a chief contract manager to oversee and enforce the contracting program;~~

~~(iii) a training coordinator, appointed as provided in 47-1-210;~~

~~(iv)~~ deputy public defenders, as provided in 47-1-215, who are exempt from the state classification and pay plan as provided in 2-18-103;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the ~~office of chief public defender~~ PUBLIC DEFENDER DIVISION.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

~~(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

~~(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and~~

~~(b) transcript fees, as provided in 3-5-604.~~

~~(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.~~

~~(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

~~(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.~~

~~(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.~~

~~(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.~~

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.~~"

Section 29. Section 47-1-202, MCA, is amended to read:

"47-1-202. ~~Chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR -- duties. (1) In addition to the duties provided in 47-1-201~~,~~ and subject to approval by the director, the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall:

(a) ~~act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~

~~(b) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

~~(c)~~ develop and ~~present for the commission's approval~~ implement a regional strategic plan for the delivery of public defender services;

~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

~~(e)~~(b) ~~establish~~ ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services ~~office~~ DIVISION established in ~~[section 27]~~ [SECTION 26];

~~(f)~~(c) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(g)~~(d) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(h)~~(e) work with the training coordinator provided for in 47-1-210 to establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(f) work with the central services ~~office~~ DIVISION to establish procedures to handle complaints about public defender performance ~~and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;~~

~~(j) actively seek gifts, grants, and donations that may be available through the federal government or~~

~~other sources to help fund the system~~; and

~~(k)~~(g) perform all other duties assigned by the ~~commission~~ director pursuant to this chapter.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR may not maintain a client caseload."

Section 30. Section 47-1-205, MCA, is amended to read:

"47-1-205. ~~Office of chief appellate defender -- chief appellate defender~~ APPELLATE DEFENDER DIVISION -- DIVISION ADMINISTRATOR. (1) There is an ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION must be located in Helena, Montana.

(2) (a) The ~~commission~~ director shall hire and supervise ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR to manage and supervise the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state.

(c) The position of ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103.

(3) ~~The~~ Subject to approval by the director, the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR shall:

(a) direct, manage, and supervise all public defender services provided by the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION~~, including budgeting, reporting, and related functions~~;

(b) ensure that when a court orders the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(1)(f)~~(1)(c) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION

personnel ~~as authorized by the appellate defender~~;

(e) contract for services as provided in 47-1-216 and as authorized by the ~~commission~~ director according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION and submit records and reports to the ~~commission as requested through the office of state public defender~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26];

(g) implement standards and procedures established by the ~~commission~~ director for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION;

(h) maintain a minimum client caseload as determined by the ~~commission~~ director;

(i) confer with the ~~chief public defender~~ director on budgetary issues and submit budgetary requests and information for the reports required by law or by the governor ~~through the chief public defender~~; and

(j) perform all other duties assigned to the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR by the ~~commission~~ director."

Section 31. Section 47-1-210, MCA, is amended to read:

"47-1-210. Training program -- coordinator. (1) There is within the ~~office~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26] a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR shall ~~appoint~~ hire the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender; and

(e) ~~apply for and assist in the disbursement of federal funds or other grant money to aid the statewide~~

~~public defender system; and~~

~~(f)~~ perform other duties assigned by the ~~chief public defender~~ director."

Section 32. Section 47-1-215, MCA, is amended to read:

"47-1-215. Regional offices -- deputy public defenders -- office space. (1) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) ~~Each~~ Subject to approval by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders ~~the office to assign~~ the assignment of counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(1)(f)~~(1)(c);

(d) hire and supervise the work of regional office personnel as authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR;

(e) coordinate with the contract manager provided for in 47-1-216 to contract for services as ~~provided in 47-1-216 and~~ authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR according to the strategic plan approved by the ~~commission~~ director;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR as requested;

(g) implement the standards and procedures established by the ~~commission~~ director and ~~chief public defender~~ THE PUBLIC DEFENDER DIVISION ADMINISTRATOR for the region;

(h) maintain a minimum client caseload as determined by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; and

(i) perform all other duties as assigned by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must

be paid by the office of state public defender and may not be considered a county or city obligation."

Section 33. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services ~~-- rules~~. (1) The ~~commission~~ director~~, in consultation with the commission,~~ shall establish standards for a statewide contracted services program ~~that ensures~~ to be managed by the central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26]. The director shall ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region ~~and that contracting for appellate defender services is done fairly and consistently statewide~~.

(2) There is a contract manager position in the central services ~~office~~ DIVISION ~~The chief contract manager shall oversee the contracting program and may not maintain a client caseload~~ hired by the ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR. The contract manager is responsible for the administrative oversight of contracting for attorney and nonattorney support for units of the office of state public defender.

(3) ~~The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state.~~ All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) (a) Except as provided in subsection (4)(b), contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(b) Contracts for legal representation of individuals ~~appearing before the following specialty courts~~ may be awarded based on a fixed fee~~:~~.

~~(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;~~

~~(ii) a mental health treatment court, as defined in 46-1-1203;~~

~~(iii) a DUI court, as defined in 61-5-231;~~

~~(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court~~

~~that is combined with a drug treatment court; or~~

~~(v) a veterans treatment court.~~

(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the ~~commission~~ director and without verifiable assurances that effective representation will be provided.

(5) Contracting for ~~public defender and appellate defender services~~ attorney services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel ~~that meets the standards established by the commission~~;

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements ~~in accordance with standards set by the commission~~.

(6) The ~~chief public defender, deputy public defenders, and the chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, DEPUTY PUBLIC DEFENDERS, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR shall ~~provide for contract oversight and enforcement to ensure compliance with established standards~~ supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ director shall ~~adopt rules to~~ establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

(9) The ~~commission~~ director shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The ~~commission~~ director shall ~~implement rules requiring~~ ensure that there are procedures for

conducting an evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

Section 34. Section 50-20-509, MCA, is amended to read:

"50-20-509. Procedure for judicial waiver of consent. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

Section 35. Section 53-9-104, MCA, is amended to read:

"53-9-104. (Temporary) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data

to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-9-104. (Effective July 1, 2021) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims,

and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 36. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a

responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 37. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the minor."

Section 38. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- assignment of counsel. The person alleged to

be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

Section 39. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone

and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 40. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics -- rights. (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the

approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply

for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 41. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 42. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be

inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 43. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 44. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

NEW SECTION. **SECTION 45. REPEALER.** THE FOLLOWING SECTION OF THE MONTANA CODE ANNOTATED IS REPEALED:

2-15-1028. PUBLIC DEFENDER COMMISSION.

NEW SECTION. **Section 46. Transition -- appointment of director of office of state public defender.** ~~The governor shall appoint the director of the office of state public defender provided for in [section~~

~~3] no later than January 1, 2018.~~ (1) THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL HIRE THE DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER BY JULY 1, 2017. WITHIN 30 DAYS OF [THE EFFECTIVE DATE OF THIS SECTION], THE PUBLIC DEFENDER ADVISORY COMMISSION SHALL SUBMIT A LIST OF NOMINEES FOR THE POSITION OF DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL CONSIDER THE NOMINEES ON THE LIST BUT MAY HIRE A DIRECTOR WHOSE NAME WAS NOT INCLUDED ON THE LIST.

(2) BY SEPTEMBER 1, 2018, THE OFFICE OF STATE PUBLIC DEFENDER SHALL REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE ON THE STATUS OF THE TERMINATION OF THE PUBLIC DEFENDER ADVISORY COMMISSION.

NEW SECTION. **Section 47. Codification instruction -- instructions to code commissioner.** (1) ~~[Section 3]~~ [SECTION 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to ~~[section 3]~~ [SECTION 1].

(2) ~~[Sections 27 and 28]~~ [SECTIONS 26 AND 27] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to ~~[sections 27 and 28]~~ [SECTIONS 26 AND 27].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and codify it in the same part as ~~[section 3]~~ [SECTION 1];

(b) renumber 47-1-210 and 47-1-216 and codify them in Title 47, chapter 1, part 1;

(c) renumber 47-1-205 and codify it in a new part 3 in Title 47, chapter 1;

(d) renumber 47-1-118 and codify it in a new part 4 in Title 47, chapter 1; and

(e) change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2017 legislature, to reflect the new section numbers assigned pursuant to this section.

NEW SECTION. **SECTION 48. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 49. Contingent voidness.** If funding for public defender services organized

under a department director is not provided for in House Bill No. 2 or another appropriation bill, then [this act] is void.

NEW SECTION. **SECTION 50. EFFECTIVE DATES.** (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), [THIS ACT] IS EFFECTIVE JULY 1, 2017.

(2) [SECTIONS 1 AND 46] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

(3) [SECTION 45] IS EFFECTIVE JULY 1, 2019.

- END -

HOUSE BILL NO. 77

INTRODUCED BY R. BRODEHL

BY REQUEST OF THE TASK FORCE ON STATE PUBLIC DEFENDER OPERATIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A ~~DEPARTMENT-LEVEL~~ DIRECTOR HIRED BY THE ~~GOVERNOR~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY AND TEMPORARY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES ~~OFFICE~~ DIVISION UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES ~~OFFICE~~ DIVISION; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS ~~2-15-104, 2-15-111,~~ 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-111, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; ~~AND~~ REPEALING SECTION 2-15-1028, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 2-15-104, MCA, is amended to read:~~

~~**"2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:~~

~~(a) department of administration;~~

~~(b) department of military affairs;~~

~~(c) department of revenue;~~

~~(d) state board of education;~~

~~(e) department of labor and industry;~~

~~(f) department of commerce;~~

~~(g) department of justice;~~

~~(h) department of public health and human services;~~

~~(i) department of corrections;~~

~~(j) department of transportation;~~

~~(k) department of public service regulation;~~

~~(l) department of agriculture;~~

~~(m) department of livestock;~~

~~(n) department of natural resources and conservation;~~

~~(o) department of fish, wildlife, and parks;~~

~~(p) department of environmental quality;~~

~~(q) office of state public defender~~.

~~(2) For its internal structure, each department~~, except as provided by law for the office of state public ~~defender,~~ shall adhere to the following standard terms:

~~(a) The principal unit of a department is a division. Each division is headed by an administrator.~~

~~(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.~~

~~(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."~~

~~**Section 2.** Section 2-15-111, MCA, is amended to read:~~

~~**"2-15-111. Appointment and qualifications of department heads -- exception.** (1)~~ Except as ~~provided in [section 3]:~~

~~(a)~~ At the beginning of each gubernatorial term, the governor shall appoint each department head who ~~serves as a director as provided in this chapter.~~

~~(2)~~(b) ~~An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If~~

~~the senate does not confirm the appointment of a director, the governor shall make a new appointment.~~

~~(3)(c) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.~~

~~(4)(2) The governor shall select a director on the basis of the person's professional and administrative knowledge and experience and additional qualifications that are provided by law.~~

~~(5)(3) If~~ Except as provided in [section 3], if ~~a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.~~

~~(6)(4) Heads of departments who are not directors must be elected or appointed and serve and have their vacancies filled as provided by law."~~

NEW SECTION. **Section 1. Office of state public defender -- head.** ~~(1)~~ There is an office of state public defender. The head of the office is a director. The director is hired by the ~~governor from a list of nominees submitted as provided in subsection (2)~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. The director is not subject to confirmation by the senate and may be removed by the ~~governor~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION only for cause.

~~(2) The public defender advisory commission provided for in 2-15-1028 shall submit to the governor a list of three nominees for director of the office of state public defender. If the governor does not hire any individual from the initial list, the governor may request a second list of three nominees and shall hire the director from that list.~~

Section 2. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender advisory commission. ~~(1)~~ There is a public defender advisory commission attached to the office of state public defender established in ~~[section 3]~~ [SECTION 1].

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) ~~(a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to~~

~~maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~ The commission shall serve in an advisory capacity, as defined in 2-15-102, to the director of the office of state public defender.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in ~~47-1-201 [section 3]~~ [SECTION 1], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The director of the office of state public defender may call special meetings of the commission as needed."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public

education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender established in ~~[section 3]~~ [SECTION 1]:

(a) the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR ~~appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ appointed as provided in 47-1-105;

(b) the ~~employees in the positions listed~~ deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

~~(22)~~(c) the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR ~~in the office of appellate defender~~ appointed as provided in 47-1-105; and

(d) the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR appointed as provided in 47-1-105."

Section 4. Section 3-5-511, MCA, is amended to read:

"3-5-511. Witnesses' warrants -- state reimbursement. (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in 47-1-103, and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a

county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 5. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of district court proceedings -- costs. (1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.

(2) Compensation for transcripts under this section is as follows:

(a) (i) Ordinary transcript - $2 per page for the original furnished to a state or local government agency, $2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(ii) Expedited transcript - $4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(iii) Daily transcript - $5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

(ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

(3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (2) must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.

(4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.

(b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(c) In civil cases, all transcripts required by the county must be furnished and must be paid for by the county pursuant to subsection (2).

(5) (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the office of state public defender, as provided in ~~47-1-201 [section 27]~~ [SECTION 26].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.

(6) As used in this section, the following definitions apply:

(a) "Copy" means any replication of the original transcript regardless of the medium.

(b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

(c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.

(d) "Ordinary transcript" means a transcript of all or part of the proceedings."

Section 6. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court

costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 7. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration

and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the state tax appeal board established in 2-15-1015; and

~~(iii) the office of state public defender; and~~

~~(iv)~~(iii) the division of banking and financial institutions;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 8. Section 17-7-154, MCA, is amended to read:

"17-7-154. (Temporary) Expenditures for district courts and office of public defender. Expenditure comparisons of state resources to local government must include state expenditures for the district courts and the office of state public defender but not for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. (Terminates June 30, 2025--sec. 7, Ch. 232, L. 2015.)"

Section 9. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing -- exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in ~~47-1-201(5) [section 27]~~ [SECTION 26].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 10. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in ~~47-1-201 [section 3]~~ [SECTION 1].

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604."

Section 11. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a

petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 12. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the minor parent."

Section 13. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 14. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 15. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage

of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

Section 16. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 17. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move

to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

SECTION 18. SECTION 46-21-111, MCA, IS AMENDED TO READ:

"46-21-111. Preservation and disposal of biological evidence obtained in criminal proceeding. (1) (a) A law enforcement agency shall preserve biological evidence that the agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(b) An agency may propose to dispose of biological evidence before the expiration of the time period described in subsection (1)(a) if the agency notifies the convicted person, the attorney of record for the convicted person, and the Montana ~~chief~~ public defender division administrator. The notification must include a description of the biological evidence, a statement that the agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period, the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

(c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

Section 19. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1],

to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 20. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

~~(1) "Commission" means the public defender advisory commission established in 2-15-1028.~~

~~(2)~~(1) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

~~(3)~~(2) "Director" means the director of the office of state public defender hired by the ~~governor pursuant to [section 3]~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION AS PROVIDED IN [SECTION 1].

~~(4)~~(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)~~~~(5)~~(4) "Office" means the office of state public defender established in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1].

~~(5)~~~~(6)~~(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION AND THE CONFLICT DEFENDER DIVISION.

~~(6)~~~~(7)~~(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 21. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ director.

(2) The ~~commission~~ director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

(6) A PUBLIC DEFENDER MAY NOT BE ASSIGNED TO ACT AS COURT-APPOINTED COUNSEL IN A PROCEEDING UNDER THE DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT, TITLE 46, CHAPTER 1, PART 11, OR UNDER THE MENTAL HEALTH TREATMENT COURT ACT, TITLE 46, CHAPTER 1, PART 12."

Section 22. Section 47-1-105, MCA, is amended to read:

"47-1-105. ~~Commission~~ Director -- duties ~~-- report~~ -- REPORT -- rules. (1) The ~~commission~~ director shall supervise and direct the system ~~in consultation with the commission~~. In addition to other duties assigned pursuant to this chapter, the ~~commission~~ director shall:

~~(1)~~ (a) establish the qualifications, duties, and compensation of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-201, appoint ~~a~~ the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

(b) establish the qualifications, duties, and compensation of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-205, appoint ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR; and

(c) establish the qualifications, duties, and compensation of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR provided for in 47-1-118, appoint the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR.

(2) The director shall establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the ~~chief public defender, the administrative director~~ administrator of the central services office established in [section 27]~~, and the chief appellate defender, and the chief conflict defender;~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, THE CENTRAL SERVICES DIVISION ADMINISTRATOR, THE APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND THE CONFLICT DEFENDER DIVISION ADMINISTRATOR;

~~(4)~~(b) review and approve any proposal to create permanent staff positions;

~~(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~ (c) establish policies and procedures for handling excess caseloads; ~~and~~

~~(7)~~(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system~~;~~.; AND

(E) EXAMINE WORKLOADS AND WORKLOAD STANDARDS FOR ALL LEVELS WITHIN THE OFFICE OF STATE PUBLIC DEFENDER AND INCLUDE ITS FINDINGS IN THE BIENNIAL REPORT PROVIDED FOR IN [SECTION 28].

~~(8)~~(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter~~; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~(c) the number of deputy public defenders and the region supervised by each;~~

~~(d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~(e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~(h) the annual caseload and workload of each public defender, except for the chief public defender, and~~

~~of the office of appellate defender, identified by region, court, and case type;~~

~~(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and~~

~~(k) detailed expenditure data by court and case type~~."

Section 23. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111.

(3) BY AUGUST 1 OF EACH YEAR, THE STATE TREASURER SHALL TRANSFER THE UNENCUMBERED BALANCE IN THE PUBLIC DEFENDER ACCOUNT TO THE STATE GENERAL FUND."

Section 24. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be

ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise

the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ central services ~~office~~ DIVISION provided for in ~~[section 27]~~ [SECTION 26]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) ~~THE CENTRAL SERVICES DIVISION SHALL REVIEW ALL APPLICATIONS FOR COURT-APPOINTED COUNSEL IN ORDER TO DETERMINE WHETHER APPLICANTS ARE ELIGIBLE.~~ THE CENTRAL SERVICES DIVISION SHALL ENSURE THAT DETERMINATIONS BASED ON PRESUMPTIVE ELIGIBILITY, INCOME AND ASSETS, AND SUBSTANTIAL HARDSHIPS ARE DONE IN A CONSISTENT MANNER THROUGHOUT THE STATE. THE CENTRAL SERVICES DIVISION SHALL VERIFY INFORMATION ON THE APPLICATION FORM FOR ALL APPLICANTS SEEKING COUNSEL UNDER SUBSECTION (3)(B).

~~(6)~~(7) The ~~commission~~ ~~office~~ CENTRAL SERVICES DIVISION shall establish procedures and adopt rules to

implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is DONE TIMELY AND IS fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section."

Section 25. Section 47-1-118, MCA, is amended to read:

"47-1-118. Conflicts of interest ~~-- chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR. (1) The ~~commission~~ director shall establish a conflicts ~~office to~~ DEFENDER DIVISION ~~contract for attorneys to represent~~ to provide for the representation of indigent defendants in circumstances ~~where~~ in which, because of conflict of interest, the ~~public defender program~~ ~~office of chief public defender or the office of chief appellate defender~~ PUBLIC DEFENDER DIVISION OR THE APPELLATE DEFENDER DIVISION is unable to provide representation to a defendant.

(2) ~~The commission shall appoint a conflicts manager to oversee the office~~ The position of ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR is appointed by the director under 47-1-105 and is exempt from the state classification and pay plan as provided in 2-18-103. The ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR reports directly to the ~~commission~~ director and not to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) The ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR may not handle cases.

~~(3)~~(4) All attorneys ~~contracted for~~ handling conflict of interest cases shall report to the ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR."

NEW SECTION. **Section 26. Central services ~~office~~ DIVISION -- responsibilities -- department of administration to support**. (1) There is a central services ~~office~~ DIVISION in the office of state public defender. The ~~office~~ DIVISION must be located in Butte, Montana. The central services ~~office~~ DIVISION is supervised by an administrator hired by the director.

(2) The central services ~~office~~ DIVISION shall:

(a) manage eligibility determination under 47-1-111;

(b) manage contracting under 47-1-216;

(c) manage training pursuant to 47-1-210; ~~and~~

(D) PROVIDE ADMINISTRATIVE SUPPORT TO THE DIRECTOR; AND

~~(d)~~(E) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(3) The central services ~~office~~ DIVISION shall establish for the office of state public defender:

(a) standard procedures to handle complaints about public defender performance and work with the ~~chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(4) The following expenses are payable by the central services ~~office~~ DIVISION if the expense is incurred at the request of a public defender and is authorized by the director:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(5) If the costs to be paid pursuant to subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(6) The department of administration established in 2-15-1001 shall provide central services support to the extent feasible and efficient.

NEW SECTION. **Section 27. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the ~~offices of chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted with in the system, identified by region, if appropriate, and office;

(v) the number of nonattorney staff employed or contracted with in the system, identified by region, if appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the ~~office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) ~~(a)~~ The office shall report data for each fiscal year by September 30 of the subsequent fiscal year

representing the caseload for the entire public defender system to the governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. THE REPORT MUST BE PROVIDED IN AN ELECTRONIC FORMAT.

~~(b) The office shall report to the governor and the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection was made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid.~~

~~(c) Reports under this subsection (2) must be provided in an electronic format.~~

Section 28. Section 47-1-201, MCA, is amended to read:

"47-1-201. ~~Office of state chief public defender~~ PUBLIC DEFENDER DIVISION -- personnel -- compensation -- expenses ~~-- reports~~. (1) There is ~~an office of state chief public defender~~ A PUBLIC DEFENDER DIVISION. ~~The office must be located in Butte, Montana.~~ The head of the ~~office is the chief public defender~~ DIVISION IS THE PUBLIC DEFENDER DIVISION ADMINISTRATOR, who is supervised by the ~~commission~~ director.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state. The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The position of ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire or contract for and supervise other personnel necessary to perform the function of the ~~office of state chief public defender~~ PUBLIC DEFENDER DIVISION ~~and to implement the provisions of this chapter~~, including but not limited to:

(a) ~~the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:~~

~~(i) an administrative director, who must be experienced in business management and contract management;~~

~~(ii) a chief contract manager to oversee and enforce the contracting program;~~

~~(iii) a training coordinator, appointed as provided in 47-1-210;~~

~~(iv)~~ deputy public defenders, as provided in 47-1-215, who are exempt from the state classification and pay plan as provided in 2-18-103;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the ~~office of chief public defender~~ PUBLIC DEFENDER DIVISION.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

~~(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

~~(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and~~

~~(b) transcript fees, as provided in 3-5-604.~~

~~(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.~~

~~(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

~~(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.~~

~~(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.~~

~~(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.~~

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount~~

~~is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.~~"

Section 29. Section 47-1-202, MCA, is amended to read:

"47-1-202. ~~Chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR -- duties. (1) In addition to the duties provided in 47-1-201~~,~~ and subject to approval by the director, the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall:

(a) ~~act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~

~~(b) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

~~(c)~~ develop and ~~present for the commission's approval~~ implement a regional strategic plan for the delivery of public defender services;

~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

~~(e)~~(b) ~~establish~~ ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services ~~office~~ DIVISION established in ~~[section 27]~~ [SECTION 26];

~~(f)~~(c) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(g)~~(d) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(h)~~(e) work with the training coordinator provided for in 47-1-210 to establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(f) work with the central services ~~office~~ DIVISION to establish procedures to handle complaints about public defender performance ~~and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary~~

~~jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;~~

~~(j) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system~~; and

~~(k)~~(g) perform all other duties assigned by the ~~commission~~ director pursuant to this chapter.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR may not maintain a client caseload."

Section 30. Section 47-1-205, MCA, is amended to read:

"47-1-205. ~~Office of chief appellate defender -- chief appellate defender~~ APPELLATE DEFENDER DIVISION -- DIVISION ADMINISTRATOR. (1) There is an ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION must be located in Helena, Montana.

(2) (a) The ~~commission~~ director shall hire and supervise ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR to manage and supervise the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state.

(c) The position of ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103.

(3) ~~The~~ Subject to approval by the director, the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR shall:

(a) direct, manage, and supervise all public defender services provided by the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION~~, including budgeting, reporting, and related functions~~;

(b) ensure that when a court orders the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(1)(f)~~(1)(c) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION personnel ~~as authorized by the appellate defender~~;

(e) contract for services as provided in 47-1-216 and as authorized by the ~~commission~~ director according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION and submit records and reports to the ~~commission as requested through the office of state public defender~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26];

(g) implement standards and procedures established by the ~~commission~~ director for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION;

(h) maintain a minimum client caseload as determined by the ~~commission~~ director;

(i) confer with the ~~chief public defender~~ director on budgetary issues and submit budgetary requests and information for the reports required by law or by the governor ~~through the chief public defender~~; and

(j) perform all other duties assigned to the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR by the ~~commission~~ director."

Section 31. Section 47-1-210, MCA, is amended to read:

"47-1-210. Training program -- coordinator. (1) There is within the ~~office~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26] a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR shall ~~appoint~~ hire the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender; and

(e) ~~apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and~~

~~(f)~~ perform other duties assigned by the ~~chief public defender~~ director."

Section 32. Section 47-1-215, MCA, is amended to read:

"47-1-215. Regional offices -- deputy public defenders -- office space. (1) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) ~~Each~~ Subject to approval by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders ~~the office to assign~~ the assignment of counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(1)(f)~~(1)(c);

(d) hire and supervise the work of regional office personnel as authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR;

(e) coordinate with the contract manager provided for in 47-1-216 to contract for services as ~~provided in 47-1-216 and~~ authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR according to the strategic plan approved by the ~~commission~~ director;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR as requested;

(g) implement the standards and procedures established by the ~~commission~~ director and ~~chief public defender~~ THE PUBLIC DEFENDER DIVISION ADMINISTRATOR for the region;

(h) maintain a minimum client caseload as determined by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; and

(i) perform all other duties as assigned by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office of state public defender and may not be considered a county or city obligation."

Section 33. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services ~~-- rules~~. (1) The ~~commission~~ director~~, in consultation with the commission,~~ shall establish standards for a statewide contracted services program ~~that ensures~~ to be managed by the central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26]. The director shall ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region ~~and that contracting for appellate defender services is done fairly and consistently statewide~~.

(2) There is a contract manager position in the central services ~~office~~ DIVISION ~~The chief contract manager shall oversee the contracting program and may not maintain a client caseload~~ hired by the ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR. The contract manager is responsible for the administrative oversight of contracting for attorney and nonattorney support for units of the office of state public defender.

(3) ~~The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state.~~ All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) (a) Except as provided in subsection (4)(b), contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

(b) Contracts for legal representation of individuals ~~appearing before the following specialty courts~~ may be awarded based on a fixed fee~~:~~.

~~(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;~~

~~(ii) a mental health treatment court, as defined in 46-1-1203;~~

~~(iii) a DUI court, as defined in 61-5-231;~~

~~(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or~~

~~(v) a veterans treatment court.~~

(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the ~~commission~~ director and without verifiable assurances that effective representation will be provided.

(5) Contracting for ~~public defender and appellate defender services~~ attorney services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel ~~that meets the standards established by the commission~~;

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; and

(h) continuing education requirements ~~in accordance with standards set by the commission~~.

(6) The ~~chief public defender, deputy public defenders, and the chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, DEPUTY PUBLIC DEFENDERS, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR shall ~~provide for contract oversight and enforcement to ensure compliance with established standards~~ supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ director shall ~~adopt rules to~~ establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

(9) The ~~commission~~ director shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The ~~commission~~ director shall ~~implement rules requiring~~ ensure that there are procedures for conducting an evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

Section 34. Section 50-20-509, MCA, is amended to read:

"50-20-509. Procedure for judicial waiver of consent. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

Section 35. Section 53-9-104, MCA, is amended to read:

"53-9-104. (Temporary) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided

for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-9-104. (Effective July 1, 2021) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for

in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 36. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 37. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the minor."

Section 38. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

Section 39. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court

shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 40. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics -- rights. (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the

petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the

period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the

private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 41. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 42. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 43. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to

present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 44. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

NEW SECTION. **SECTION 45. REPEALER.** THE FOLLOWING SECTION OF THE MONTANA CODE ANNOTATED IS REPEALED:

2-15-1028. PUBLIC DEFENDER COMMISSION.

NEW SECTION. **Section 46. Transition -- appointment of director of office of state public defender.** ~~The governor shall appoint the director of the office of state public defender provided for in [section 3] no later than January 1, 2018.~~ (1) THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL HIRE THE DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER BY JULY 1, 2017. WITHIN 30 DAYS OF [THE EFFECTIVE DATE OF THIS SECTION], THE PUBLIC DEFENDER ADVISORY COMMISSION SHALL SUBMIT A LIST OF NOMINEES FOR THE POSITION OF DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL CONSIDER THE NOMINEES ON THE LIST BUT MAY HIRE A DIRECTOR WHOSE NAME WAS NOT INCLUDED ON THE LIST.

(2) BY SEPTEMBER 1, 2018, THE OFFICE OF STATE PUBLIC DEFENDER SHALL REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE ON THE STATUS OF THE TERMINATION OF THE PUBLIC DEFENDER ADVISORY COMMISSION.

NEW SECTION. **Section 47. Codification instruction -- instructions to code commissioner.** (1) ~~[Section 3]~~ [SECTION 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to ~~[section 3]~~ [SECTION 1].

(2) ~~[Sections 27 and 28]~~ [SECTIONS 26 AND 27] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to ~~[sections 27 and 28]~~ [SECTIONS 26 AND 27].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and codify it in the same part as ~~[section 3]~~ [SECTION 1];

(b) renumber 47-1-210 and 47-1-216 and codify them in Title 47, chapter 1, part 1;

(c) renumber 47-1-205 and codify it in a new part 3 in Title 47, chapter 1;

(d) renumber 47-1-118 and codify it in a new part 4 in Title 47, chapter 1; and

(e) change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2017 legislature, to reflect the new section numbers assigned pursuant to this section.

NEW SECTION. **SECTION 48. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID

APPLICATIONS.

NEW SECTION. **Section 49. Contingent voidness.** If funding for public defender services organized under a department director is not provided for in House Bill No. 2 or another appropriation bill, then [this act] is void.

NEW SECTION. **SECTION 50. EFFECTIVE DATES.** (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), [THIS ACT] IS EFFECTIVE JULY 1, 2017.

(2) [SECTIONS 1 AND 46] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

(3) [SECTION 45] IS EFFECTIVE JULY 1, 2019.

- END -

HOUSE BILL NO. 77

INTRODUCED BY R. BRODEHL

BY REQUEST OF THE TASK FORCE ON STATE PUBLIC DEFENDER OPERATIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A ~~DEPARTMENT-LEVEL~~ DIRECTOR HIRED BY THE ~~GOVERNOR~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY AND TEMPORARY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES ~~OFFICE~~ DIVISION UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES ~~OFFICE~~ DIVISION; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS ~~2-15-104, 2-15-111,~~ 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-111, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; ~~AND~~ REPEALING SECTION 2-15-1028, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 2-15-104, MCA, is amended to read:~~

~~**"2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:~~

~~(a) department of administration;~~

~~(b) department of military affairs;~~

~~(c) department of revenue;~~

~~(d) state board of education;~~

~~(e) department of labor and industry;~~

~~(f) department of commerce;~~

~~(g) department of justice;~~

~~(h) department of public health and human services;~~

~~(i) department of corrections;~~

~~(j) department of transportation;~~

~~(k) department of public service regulation;~~

~~(l) department of agriculture;~~

~~(m) department of livestock;~~

~~(n) department of natural resources and conservation;~~

~~(o) department of fish, wildlife, and parks;~~

~~(p) department of environmental quality;~~

~~(q) office of state public defender~~.

~~(2) For its internal structure, each department~~, except as provided by law for the office of state public ~~defender,~~ shall adhere to the following standard terms:

~~(a) The principal unit of a department is a division. Each division is headed by an administrator.~~

~~(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.~~

~~(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."~~

~~**Section 2.** Section 2-15-111, MCA, is amended to read:~~

~~**"2-15-111. Appointment and qualifications of department heads -- exception.** (1)~~ Except as ~~provided in [section 3]:~~

~~(a)~~ At the beginning of each gubernatorial term, the governor shall appoint each department head who ~~serves as a director as provided in this chapter.~~

~~(2)~~(b) ~~An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If~~

~~the senate does not confirm the appointment of a director, the governor shall make a new appointment.~~

~~(3)(c) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.~~

~~(4)(2) The governor shall select a director on the basis of the person's professional and administrative knowledge and experience and additional qualifications that are provided by law.~~

~~(5)(3) If~~ Except as provided in [section 3], if ~~a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.~~

~~(6)(4) Heads of departments who are not directors must be elected or appointed and serve and have their vacancies filled as provided by law."~~

NEW SECTION. **Section 1. Office of state public defender -- head.** ~~(1)~~ There is an office of state public defender. The head of the office is a director. The director is hired by the ~~governor from a list of nominees submitted as provided in subsection (2)~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. The director is not subject to confirmation by the senate and may be removed by the ~~governor~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION only for cause.

~~(2) The public defender advisory commission provided for in 2-15-1028 shall submit to the governor a list of three nominees for director of the office of state public defender. If the governor does not hire any individual from the initial list, the governor may request a second list of three nominees and shall hire the director from that list.~~

Section 2. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender advisory commission. ~~(1)~~ There is a public defender advisory commission attached to the office of state public defender established in ~~[section 3]~~ [SECTION 1].

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) ~~(a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to~~

~~maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~ The commission shall serve in an advisory capacity, as defined in 2-15-102, to the director of the office of state public defender.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in ~~47-1-201 [section 3]~~ [SECTION 1], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The director of the office of state public defender may call special meetings of the commission as needed."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public

education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender established in ~~[section 3]~~ [SECTION 1]:

(a) the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR ~~appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ appointed as provided in 47-1-105;

(b) the ~~employees in the positions listed~~ deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

~~(22)~~(c) the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR ~~in the office of appellate defender~~ appointed as provided in 47-1-105; and

(d) the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR appointed as provided in 47-1-105."

Section 4. Section 3-5-511, MCA, is amended to read:

"3-5-511. Witnesses' warrants -- state reimbursement. (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in 47-1-103, and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a

county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 5. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of district court proceedings -- costs. (1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.

(2) Compensation for transcripts under this section is as follows:

(a) (i) Ordinary transcript - $2 per page for the original furnished to a state or local government agency, $2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(ii) Expedited transcript - $4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(iii) Daily transcript - $5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

(ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

(3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (2) must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.

(4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.

(b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(c) In civil cases, all transcripts required by the county must be furnished and must be paid for by the county pursuant to subsection (2).

(5) (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the office of state public defender, as provided in ~~47-1-201 [section 27]~~ [SECTION 26].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.

(6) As used in this section, the following definitions apply:

(a) "Copy" means any replication of the original transcript regardless of the medium.

(b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

(c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.

(d) "Ordinary transcript" means a transcript of all or part of the proceedings."

Section 6. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court

costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 7. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration

and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the state tax appeal board established in 2-15-1015; and

~~(iii) the office of state public defender; and~~

~~(iv)~~(iii) the division of banking and financial institutions;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 8. Section 17-7-154, MCA, is amended to read:

"17-7-154. (Temporary) Expenditures for district courts and office of public defender. Expenditure comparisons of state resources to local government must include state expenditures for the district courts and the office of state public defender but not for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. (Terminates June 30, 2025--sec. 7, Ch. 232, L. 2015.)"

Section 9. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing -- exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in ~~47-1-201(5) [section 27]~~ [SECTION 26].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 10. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in ~~47-1-201 [section 3]~~ [SECTION 1].

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604."

Section 11. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a

petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 12. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the minor parent."

Section 13. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 14. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 15. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage

of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

Section 16. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 17. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move

to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

SECTION 18. SECTION 46-21-111, MCA, IS AMENDED TO READ:

"46-21-111. Preservation and disposal of biological evidence obtained in criminal proceeding. (1) (a) A law enforcement agency shall preserve biological evidence that the agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(b) An agency may propose to dispose of biological evidence before the expiration of the time period described in subsection (1)(a) if the agency notifies the convicted person, the attorney of record for the convicted person, and the Montana ~~chief~~ public defender division administrator. The notification must include a description of the biological evidence, a statement that the agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period, the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

(c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

Section 19. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1],

to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 20. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

~~(1) "Commission" means the public defender advisory commission established in 2-15-1028.~~

~~(2)~~(1) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

~~(3)~~(2) "Director" means the director of the office of state public defender hired by the ~~governor pursuant to [section 3]~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION AS PROVIDED IN [SECTION 1].

~~(4)~~(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)~~~~(5)~~(4) "Office" means the office of state public defender established in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1].

~~(5)~~~~(6)~~(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION AND THE CONFLICT DEFENDER DIVISION.

~~(6)~~~~(7)~~(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 21. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ director.

(2) The ~~commission~~ director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

~~(6) A PUBLIC DEFENDER MAY NOT BE ASSIGNED TO ACT AS COURT-APPOINTED COUNSEL IN A PROCEEDING UNDER THE DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT, TITLE 46, CHAPTER 1, PART 11, OR UNDER THE MENTAL HEALTH TREATMENT COURT ACT, TITLE 46, CHAPTER 1, PART 12.~~"

Section 22. Section 47-1-105, MCA, is amended to read:

"47-1-105. ~~Commission~~ Director -- duties ~~-- report~~ -- REPORT -- rules. (1) The ~~commission~~ director shall supervise and direct the system ~~in consultation with the commission~~. In addition to other duties assigned pursuant to this chapter, the ~~commission~~ director shall:

~~(1)~~ (a) establish the qualifications, duties, and compensation of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-201, appoint ~~a~~ the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

(b) establish the qualifications, duties, and compensation of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-205, appoint ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR; and

(c) establish the qualifications, duties, and compensation of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR provided for in 47-1-118, appoint the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR.

(2) The director shall establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the ~~chief public defender, the administrative director~~ administrator of the central services office established in [section 27], ~~and the chief appellate defender, and the chief conflict defender;~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, THE CENTRAL SERVICES DIVISION ADMINISTRATOR, THE APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND THE CONFLICT DEFENDER DIVISION ADMINISTRATOR;

~~(4)~~(b) review and approve any proposal to create permanent staff positions;

~~(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~ (c) establish policies and procedures for handling excess caseloads; ~~and~~

~~(7)~~(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system~~;~~.; AND

(E) EXAMINE WORKLOADS AND WORKLOAD STANDARDS FOR ALL LEVELS WITHIN THE OFFICE OF STATE PUBLIC DEFENDER AND INCLUDE ITS FINDINGS IN THE BIENNIAL REPORT PROVIDED FOR IN [SECTION 28].

~~(8)~~(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter~~; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~(c) the number of deputy public defenders and the region supervised by each;~~

~~(d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~(e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~(h) the annual caseload and workload of each public defender, except for the chief public defender, and~~

~~of the office of appellate defender, identified by region, court, and case type;~~

~~(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and~~

~~(k) detailed expenditure data by court and case type~~."

Section 23. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111.

(3) BY AUGUST 1 OF EACH YEAR, THE STATE TREASURER SHALL TRANSFER THE UNENCUMBERED BALANCE IN THE PUBLIC DEFENDER ACCOUNT TO THE STATE GENERAL FUND."

Section 24. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be

ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise

the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ central services ~~office~~ DIVISION provided for in ~~[section 27]~~ [SECTION 26]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

~~(6) THE CENTRAL SERVICES DIVISION SHALL REVIEW ALL APPLICATIONS FOR COURT-APPOINTED COUNSEL IN ORDER TO DETERMINE WHETHER APPLICANTS ARE ELIGIBLE.~~ THE CENTRAL SERVICES DIVISION SHALL ENSURE THAT DETERMINATIONS BASED ON PRESUMPTIVE ELIGIBILITY, INCOME AND ASSETS, AND SUBSTANTIAL HARDSHIPS ARE DONE IN A CONSISTENT MANNER THROUGHOUT THE STATE. THE CENTRAL SERVICES DIVISION SHALL VERIFY INFORMATION ON THE APPLICATION FORM FOR ALL APPLICANTS SEEKING COUNSEL UNDER SUBSECTION (3)(B).

~~(6)~~(7) The ~~commission~~ ~~office~~ CENTRAL SERVICES DIVISION shall establish procedures and adopt rules to

implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is DONE TIMELY AND IS fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section."

Section 25. Section 47-1-118, MCA, is amended to read:

"47-1-118. Conflicts of interest ~~-- chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR. (1) The ~~commission~~ director shall establish a conflicts ~~office to~~ DEFENDER DIVISION ~~contract for attorneys to represent~~ to provide for the representation of indigent defendants in circumstances ~~where~~ in which, because of conflict of interest, the ~~public defender program~~ ~~office of chief public defender or the office of chief appellate defender~~ PUBLIC DEFENDER DIVISION OR THE APPELLATE DEFENDER DIVISION is unable to provide representation to a defendant.

(2) ~~The commission shall appoint a conflicts manager to oversee the office~~ The position of ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR is appointed by the director under 47-1-105 and is exempt from the state classification and pay plan as provided in 2-18-103. The ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR reports directly to the ~~commission~~ director and not to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) The ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR may not handle cases.

~~(3)~~(4) All attorneys ~~contracted for~~ handling conflict of interest cases shall report to the ~~conflicts manager~~ ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR."

NEW SECTION. **Section 26. Central services ~~office~~ DIVISION -- responsibilities -- department of administration to support**. (1) There is a central services ~~office~~ DIVISION in the office of state public defender. The ~~office~~ DIVISION must be located in Butte, Montana. The central services ~~office~~ DIVISION is supervised by an administrator hired by the director.

(2) The central services ~~office~~ DIVISION shall:

(a) manage eligibility determination under 47-1-111;

(b) manage contracting under 47-1-216;

(c) manage training pursuant to 47-1-210; ~~and~~

(D) PROVIDE ADMINISTRATIVE SUPPORT TO THE DIRECTOR; AND

~~(d)~~(E) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(3) The central services ~~office~~ DIVISION shall establish for the office of state public defender:

(a) standard procedures to handle complaints about public defender performance and work with the ~~chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(4) The following expenses are payable by the central services ~~office~~ DIVISION if the expense is incurred at the request of a public defender and is authorized by the director:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(5) If the costs to be paid pursuant to subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(6) The department of administration established in 2-15-1001 shall provide central services support to the extent feasible and efficient.

NEW SECTION. **Section 27. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the ~~offices of chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted with in the system, identified by region, if appropriate, and office;

(v) the number of nonattorney staff employed or contracted with in the system, identified by region, if appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the ~~office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) ~~(a)~~ The office shall report data for each fiscal year by September 30 of the subsequent fiscal year

representing the caseload for the entire public defender system to the governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. THE REPORT MUST BE PROVIDED IN AN ELECTRONIC FORMAT.

~~(b) The office shall report to the governor and the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection was made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid.~~

~~(c) Reports under this subsection (2) must be provided in an electronic format.~~

Section 28. Section 47-1-201, MCA, is amended to read:

"47-1-201. ~~Office of state chief public defender~~ PUBLIC DEFENDER DIVISION -- personnel -- compensation -- expenses ~~-- reports~~. (1) There is ~~an office of state chief public defender~~ A PUBLIC DEFENDER DIVISION. ~~The office must be located in Butte, Montana.~~ The head of the ~~office is the chief public defender~~ DIVISION IS THE PUBLIC DEFENDER DIVISION ADMINISTRATOR, who is supervised by the ~~commission~~ director.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state. The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The position of ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire or contract for and supervise other personnel necessary to perform the function of the ~~office of state chief public defender~~ PUBLIC DEFENDER DIVISION ~~and to implement the provisions of this chapter~~, including but not limited to:

(a) ~~the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:~~

~~(i) an administrative director, who must be experienced in business management and contract management;~~

~~(ii) a chief contract manager to oversee and enforce the contracting program;~~

~~(iii) a training coordinator, appointed as provided in 47-1-210;~~

~~(iv)~~ deputy public defenders, as provided in 47-1-215, who are exempt from the state classification and pay plan as provided in 2-18-103;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the ~~office of chief public defender~~ PUBLIC DEFENDER DIVISION.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

~~(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

~~(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and~~

~~(b) transcript fees, as provided in 3-5-604.~~

~~(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.~~

~~(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

~~(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.~~

~~(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.~~

~~(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.~~

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount~~

~~is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.~~"

Section 29. Section 47-1-202, MCA, is amended to read:

"47-1-202. ~~Chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR -- duties. (1) In addition to the duties provided in 47-1-201~~,~~ and subject to approval by the director, the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall:

(a) ~~act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~

~~(b) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

~~(c)~~ develop and ~~present for the commission's approval~~ implement a regional strategic plan for the delivery of public defender services;

~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

~~(e)~~(b) ~~establish~~ ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services ~~office~~ DIVISION established in ~~[section 27]~~ [SECTION 26];

~~(f)~~(c) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(g)~~(d) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(h)~~(e) work with the training coordinator provided for in 47-1-210 to establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(f) work with the central services ~~office~~ DIVISION to establish procedures to handle complaints about public defender performance~~ and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary~~

~~jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;~~

~~(j) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system~~; and

~~(k)~~(g) perform all other duties assigned by the ~~commission~~ director pursuant to this chapter.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR may not maintain a client caseload."

Section 30. Section 47-1-205, MCA, is amended to read:

"47-1-205. ~~Office of chief appellate defender -- chief appellate defender~~ APPELLATE DEFENDER DIVISION -- DIVISION ADMINISTRATOR. (1) There is an ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION must be located in Helena, Montana.

(2) (a) The ~~commission~~ director shall hire and supervise ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR to manage and supervise the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state.

(c) The position of ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103.

(3) ~~The~~ Subject to approval by the director, the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR shall:

(a) direct, manage, and supervise all public defender services provided by the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION~~, including budgeting, reporting, and related functions~~;

(b) ensure that when a court orders the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(1)(f)~~(1)(c) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION personnel ~~as authorized by the appellate defender~~;

(e) contract for services as provided in 47-1-216 and as authorized by the ~~commission~~ director according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION and submit records and reports to the ~~commission as requested through the office of state public defender~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26];

(g) implement standards and procedures established by the ~~commission~~ director for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION;

(h) maintain a minimum client caseload as determined by the ~~commission~~ director;

(i) confer with the ~~chief public defender~~ director on budgetary issues and submit budgetary requests and information for the reports required by law or by the governor ~~through the chief public defender~~; and

(j) perform all other duties assigned to the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR by the ~~commission~~ director."

Section 31. Section 47-1-210, MCA, is amended to read:

"47-1-210. Training program -- coordinator. (1) There is within the ~~office~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26] a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR shall ~~appoint~~ hire the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender; and

(e) ~~apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and~~

~~(f)~~ perform other duties assigned by the ~~chief public defender~~ director."

Section 32. Section 47-1-215, MCA, is amended to read:

"47-1-215. Regional offices -- deputy public defenders -- office space. (1) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) ~~Each~~ Subject to approval by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders ~~the office to assign~~ the assignment of counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(1)(f)~~(1)(c);

(d) hire and supervise the work of regional office personnel as authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR;

(e) coordinate with the contract manager provided for in 47-1-216 to contract for services as ~~provided in 47-1-216 and~~ authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR according to the strategic plan approved by the ~~commission~~ director;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR as requested;

(g) implement the standards and procedures established by the ~~commission~~ director and ~~chief public defender~~ THE PUBLIC DEFENDER DIVISION ADMINISTRATOR for the region;

(h) maintain a minimum client caseload as determined by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; and

(i) perform all other duties as assigned by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office of state public defender and may not be considered a county or city obligation."

Section 33. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services ~~-- rules~~. (1) The ~~commission~~ director~~, in consultation with the commission,~~ shall establish standards for a statewide contracted services program ~~that ensures~~ to be managed by the central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26]. The director shall ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region ~~and that contracting for appellate defender services is done fairly and consistently statewide~~.

(2) There is a contract manager position in the central services ~~office~~ DIVISION ~~The chief contract manager shall oversee the contracting program and may not maintain a client caseload~~ hired by the ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR. The contract manager is responsible for the administrative oversight of contracting for attorney and nonattorney support for units of the office of state public defender.

(3) ~~The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state.~~ All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) ~~(a) Except as provided in subsection (4)(b), contracts~~ CONTRACTS may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

~~(b) Contracts for legal representation of individuals appearing before the following specialty courts may be awarded based on a fixed fee:~~.

~~(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;~~

~~(ii) a mental health treatment court, as defined in 46-1-1203;~~

~~(iii) a DUI court, as defined in 61-5-231;~~

~~(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or~~

~~(v) a veterans treatment court.~~

~~(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the commission~~ director ~~and without verifiable assurances that effective representation will be provided.~~

(5) Contracting for ~~public defender and appellate defender services~~ attorney services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel ~~that meets the standards established by the commission~~;

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; ~~and~~

(h) continuing education requirements ~~in accordance with standards set by the commission~~; AND

(I) COST OF THE SERVICES.

(6) The ~~chief public defender, deputy public defenders, and the chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, DEPUTY PUBLIC DEFENDERS, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR shall ~~provide for contract oversight and enforcement to ensure compliance with established standards~~ supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ director shall ~~adopt rules to~~ establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for

the benefit of the appointed client.

(9) The ~~commission~~ director shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The ~~commission~~ director shall ~~implement rules requiring~~ ensure that there are procedures for conducting an evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

Section 34. Section 50-20-509, MCA, is amended to read:

"50-20-509. Procedure for judicial waiver of consent. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both

parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

Section 35. Section 53-9-104, MCA, is amended to read:

"53-9-104. (Temporary) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime

victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-9-104. (Effective July 1, 2021) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or

dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 36. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 37. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of

state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the minor."

Section 38. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

Section 39. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of

this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 40. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics -- rights. (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before

the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent,

sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 41. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 42. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need

not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 43. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see

or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 44. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

NEW SECTION. **SECTION 45. REPEALER.** THE FOLLOWING SECTION OF THE MONTANA CODE ANNOTATED IS REPEALED:

2-15-1028. PUBLIC DEFENDER COMMISSION.

NEW SECTION. **Section 46. Transition -- appointment of director of office of state public defender.** ~~The governor shall appoint the director of the office of state public defender provided for in [section 3] no later than January 1, 2018.~~ (1) THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL HIRE THE DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER BY JULY 1, 2017. WITHIN 30 DAYS OF [THE EFFECTIVE DATE OF THIS SECTION], THE PUBLIC DEFENDER ADVISORY COMMISSION SHALL SUBMIT A LIST OF NOMINEES FOR THE POSITION OF DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL CONSIDER THE NOMINEES ON THE LIST BUT MAY HIRE A DIRECTOR WHOSE NAME WAS NOT INCLUDED ON THE LIST.

(2) BY SEPTEMBER 1, 2018, THE OFFICE OF STATE PUBLIC DEFENDER SHALL REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE ON THE STATUS OF THE TERMINATION OF THE PUBLIC DEFENDER ADVISORY COMMISSION.

NEW SECTION. **Section 47. Codification instruction -- instructions to code commissioner.** (1) ~~[Section 3]~~ [SECTION 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to ~~[section 3]~~ [SECTION 1].

(2) ~~[Sections 27 and 28]~~ [SECTIONS 26 AND 27] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to ~~[sections 27 and 28]~~ [SECTIONS 26 AND 27].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and codify it in the same part as ~~[section 3]~~ [SECTION 1];

(b) renumber 47-1-210 and 47-1-216 and codify them in Title 47, chapter 1, part 1;

(c) renumber 47-1-205 and codify it in a new part 3 in Title 47, chapter 1;

(d) renumber 47-1-118 and codify it in a new part 4 in Title 47, chapter 1; and

(e) change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2017 legislature, to reflect the new section numbers assigned pursuant to this section.

NEW SECTION. **SECTION 48. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS

APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **Section 49. Contingent voidness.** If funding for public defender services organized under a department director is not provided for in House Bill No. 2 or another appropriation bill, then [this act] is void.

NEW SECTION. **SECTION 50. EFFECTIVE DATES.** (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), [THIS ACT] IS EFFECTIVE JULY 1, 2017.

(2) [SECTIONS 1 AND 46] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

(3) [SECTION 45] IS EFFECTIVE JULY 1, 2019.

- END -

HOUSE BILL NO. 77

INTRODUCED BY R. BRODEHL

BY REQUEST OF THE TASK FORCE ON STATE PUBLIC DEFENDER OPERATIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A ~~DEPARTMENT-LEVEL~~ DIRECTOR HIRED BY THE ~~GOVERNOR~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY AND TEMPORARY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES ~~OFFICE~~ DIVISION UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES ~~OFFICE~~ DIVISION; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS ~~2-15-104, 2-15-111,~~ 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-111, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; ~~AND~~ REPEALING SECTION 2-15-1028, MCA; ~~PROVIDING FOR CONTINGENT VOIDNESS;~~ AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 2-15-104, MCA, is amended to read:~~

~~**"2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:~~

~~(a) department of administration;~~

~~(b) department of military affairs;~~

~~(c) department of revenue;~~

~~(d) state board of education;~~

~~(e) department of labor and industry;~~

~~(f) department of commerce;~~

~~(g) department of justice;~~

~~(h) department of public health and human services;~~

~~(i) department of corrections;~~

~~(j) department of transportation;~~

~~(k) department of public service regulation;~~

~~(l) department of agriculture;~~

~~(m) department of livestock;~~

~~(n) department of natural resources and conservation;~~

~~(o) department of fish, wildlife, and parks;~~

~~(p) department of environmental quality;~~

~~(q) office of state public defender~~.

~~(2) For its internal structure, each department~~, except as provided by law for the office of state public ~~defender,~~ shall adhere to the following standard terms:

~~(a) The principal unit of a department is a division. Each division is headed by an administrator.~~

~~(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.~~

~~(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."~~

~~**Section 2.** Section 2-15-111, MCA, is amended to read:~~

~~**"2-15-111. Appointment and qualifications of department heads -- exception.** (1)~~ Except as ~~provided in [section 3]:~~

~~(a)~~ At the beginning of each gubernatorial term, the governor shall appoint each department head who ~~serves as a director as provided in this chapter.~~

~~(2)~~(b) ~~An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If~~

~~the senate does not confirm the appointment of a director, the governor shall make a new appointment.~~

~~(3)(c) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.~~

~~(4)(2) The governor shall select a director on the basis of the person's professional and administrative knowledge and experience and additional qualifications that are provided by law.~~

~~(5)(3) If~~ Except as provided in [section 3], ~~if~~ a vacancy occurs in the office of a director, ~~the governor shall appoint a new director to serve at the pleasure of the governor.~~

~~(6)(4) Heads of departments who are not directors must be elected or appointed and serve and have their vacancies filled as provided by law."~~

NEW SECTION. **Section 1. Office of state public defender -- head.** ~~(1)~~ There is an office of state public defender. The head of the office is a director. The director is hired by the ~~governor from a list of nominees submitted as provided in subsection (2)~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. The director is not subject to confirmation by the senate and may be removed by the ~~governor~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION only for cause.

~~(2) The public defender advisory commission provided for in 2-15-1028 shall submit to the governor a list of three nominees for director of the office of state public defender. If the governor does not hire any individual from the initial list, the governor may request a second list of three nominees and shall hire the director from that list.~~

Section 2. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender advisory commission. ~~(1)~~ There is a public defender advisory commission attached to the office of state public defender established in ~~[section 3]~~ [SECTION 1].

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) ~~(a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to~~

~~maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~ The commission shall serve in an advisory capacity, as defined in 2-15-102, to the director of the office of state public defender.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in ~~47-1-201 [section 3]~~ [SECTION 1], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The director of the office of state public defender may call special meetings of the commission as needed."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public

education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender established in ~~[section 3]~~ [SECTION 1]:

(a) the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR ~~appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ appointed as provided in 47-1-105;

(b) the ~~employees in the positions listed~~ deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

~~(22)~~(c) the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR ~~in the office of appellate defender~~ appointed as provided in 47-1-105; ~~and~~

(d) the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR appointed as provided in 47-1-105; AND

(E) THE DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER PROVIDED FOR IN [SECTION 1]."

Section 4. Section 3-5-511, MCA, is amended to read:

"3-5-511. Witnesses' warrants -- state reimbursement. (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in 47-1-103, and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 5. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of district court proceedings -- costs. (1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.

(2) Compensation for transcripts under this section is as follows:

(a) (i) Ordinary transcript - $2 per page for the original furnished to a state or local government agency, $2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(ii) Expedited transcript - $4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(iii) Daily transcript - $5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

(ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of

labor statistics of the United States department of labor.

(iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

(3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (2) must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.

(4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.

(b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(c) In civil cases, all transcripts required by the county must be furnished and must be paid for by the county pursuant to subsection (2).

(5) (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the office of state public defender, as provided in ~~47-1-201 [section 27]~~ [SECTION 26].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.

(6) As used in this section, the following definitions apply:

(a) "Copy" means any replication of the original transcript regardless of the medium.

(b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

(c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.

(d) "Ordinary transcript" means a transcript of all or part of the proceedings."

Section 6. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court

program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 7. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the state tax appeal board established in 2-15-1015; and

~~(iii) the office of state public defender; and~~

~~(iv)~~(iii) the division of banking and financial institutions;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 8. Section 17-7-154, MCA, is amended to read:

"17-7-154. (Temporary) Expenditures for district courts and office of public defender. Expenditure comparisons of state resources to local government must include state expenditures for the district courts and the office of state public defender but not for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. (Terminates June 30, 2025--sec. 7, Ch. 232, L. 2015.)"

Section 9. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing -- exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 10. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1].

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604."

Section 11. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 12. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the minor parent."

Section 13. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings

conducted under this part."

Section 14. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 15. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

Section 16. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 17. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

SECTION 18. SECTION 46-21-111, MCA, IS AMENDED TO READ:

"46-21-111. Preservation and disposal of biological evidence obtained in criminal proceeding. (1) (a) A law enforcement agency shall preserve biological evidence that the agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(b) An agency may propose to dispose of biological evidence before the expiration of the time period described in subsection (1)(a) if the agency notifies the convicted person, the attorney of record for the convicted person, and the Montana ~~chief~~ public defender division administrator. The notification must include a description of the biological evidence, a statement that the agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period, the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required

by the interests of justice and the integrity of the criminal justice system.

(c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

Section 19. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice

require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the

court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 20. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

~~(1) "Commission" means the public defender advisory commission established in 2-15-1028.~~

~~(2)~~(1) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

~~(3)~~(2) "Director" means the director of the office of state public defender hired by the ~~governor pursuant to [section 3]~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION AS PROVIDED IN [SECTION 1].

~~(4)~~(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)(5)~~(4) "Office" means the office of state public defender established in ~~47-1-201 [section 3]~~ [SECTION 1].

~~(5)(6)~~(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION AND THE CONFLICT DEFENDER DIVISION.

~~(6)(7)~~(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 21. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services

in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ director.

(2) The ~~commission~~ director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

(6) A PUBLIC DEFENDER MAY NOT BE ASSIGNED TO ACT AS COURT-APPOINTED COUNSEL IN A PROCEEDING UNDER THE DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT, TITLE 46, CHAPTER 1, PART 11, OR UNDER THE MENTAL HEALTH TREATMENT COURT ACT, TITLE 46, CHAPTER 1, PART 12.

~~(6) A PUBLIC DEFENDER MAY NOT BE ASSIGNED TO ACT AS COURT-APPOINTED COUNSEL IN A PROCEEDING UNDER~~

~~THE DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT, TITLE 46, CHAPTER 1, PART 11, OR UNDER THE MENTAL HEALTH TREATMENT COURT ACT, TITLE 46, CHAPTER 1, PART 12.~~"

Section 22. Section 47-1-105, MCA, is amended to read:

"47-1-105. ~~Commission~~ Director -- duties ~~-- report~~ -- REPORT -- rules. (1) The ~~commission~~ director shall supervise and direct the system ~~in consultation with the commission~~. In addition to other duties assigned pursuant to this chapter, the ~~commission~~ director shall:

~~(1)~~ (a) establish the qualifications, duties, and compensation of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-201, appoint ~~a~~ the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

(b) establish the qualifications, duties, and compensation of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-205, appoint ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR; and

(c) establish the qualifications, duties, and compensation of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR provided for in 47-1-118, appoint the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR.

(2) The director shall establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the ~~chief public defender, the administrative director~~ administrator of the central services office established in [section 27]~~, and the chief appellate defender, and the chief conflict defender~~; PUBLIC DEFENDER DIVISION ADMINISTRATOR, THE CENTRAL SERVICES DIVISION ADMINISTRATOR, THE APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND THE CONFLICT DEFENDER DIVISION ADMINISTRATOR;

~~(4)~~(b) review and approve any proposal to create permanent staff positions;

~~(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~ (c) establish policies and procedures for handling excess caseloads; ~~and~~

~~(7)~~(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system~~.~~; AND

(E) EXAMINE WORKLOADS AND WORKLOAD STANDARDS FOR ALL LEVELS WITHIN THE OFFICE OF STATE PUBLIC DEFENDER AND INCLUDE ITS FINDINGS IN THE BIENNIAL REPORT PROVIDED FOR IN [SECTION 28].

~~(8)~~(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter~~; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~(c) the number of deputy public defenders and the region supervised by each;~~

~~(d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~(e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~(f) the number of new cases in which counsel was assigned to represent a party, identified by region,~~

~~court, and case type;~~

~~(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~(h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;~~

~~(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and~~

~~(k) detailed expenditure data by court and case type~~."

Section 23. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111.

(3) BY AUGUST 1 OF EACH YEAR, THE STATE TREASURER SHALL TRANSFER THE UNENCUMBERED BALANCE IN THE PUBLIC DEFENDER ACCOUNT TO THE STATE GENERAL FUND."

Section 24. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The

propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ central services ~~office~~ DIVISION provided for in ~~[section 27]~~ [SECTION 26]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) ~~THE CENTRAL SERVICES DIVISION SHALL REVIEW ALL APPLICATIONS FOR COURT-APPOINTED COUNSEL IN ORDER TO DETERMINE WHETHER APPLICANTS ARE ELIGIBLE.~~ THE CENTRAL SERVICES DIVISION SHALL ENSURE THAT

DETERMINATIONS BASED ON PRESUMPTIVE ELIGIBILITY, INCOME AND ASSETS, AND SUBSTANTIAL HARDSHIPS ARE DONE IN A CONSISTENT MANNER THROUGHOUT THE STATE. THE CENTRAL SERVICES DIVISION SHALL VERIFY INFORMATION ON THE APPLICATION FORM FOR ALL APPLICANTS SEEKING COUNSEL UNDER SUBSECTION (3)(B).

~~(6)~~(7) The ~~commission office~~ CENTRAL SERVICES DIVISION shall establish procedures and adopt rules to implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is DONE TIMELY AND IS fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section."

Section 25. Section 47-1-118, MCA, is amended to read:

"47-1-118. Conflicts of interest ~~-- chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR. (1) The ~~commission~~ director shall establish a conflicts ~~office to~~ DEFENDER DIVISION ~~contract for attorneys to represent~~ to provide for the representation of indigent defendants in circumstances ~~where~~ in which, because of conflict of interest, the ~~public defender program office of chief public defender or the office of chief appellate defender~~ PUBLIC DEFENDER DIVISION OR THE APPELLATE DEFENDER DIVISION is unable to provide representation to a defendant.

(2) ~~The commission shall appoint a conflicts manager to oversee the office~~ The position of ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR is appointed by the director under 47-1-105 and is exempt from the state classification and pay plan as provided in 2-18-103. The ~~conflicts manager chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR reports directly to the ~~commission~~ director and not to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) The ~~conflicts manager chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR may not

handle cases.

~~(3)~~(4) All attorneys ~~contracted for~~ handling conflict of interest cases shall report to the ~~conflicts manager chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR."

NEW SECTION. **Section 26. Central services ~~office~~ DIVISION -- responsibilities -- department of administration to support**. (1) There is a central services ~~office~~ DIVISION in the office of state public defender. The ~~office~~ DIVISION must be located in Butte, Montana. The central services ~~office~~ DIVISION is supervised by an administrator hired by the director.

(2) The central services ~~office~~ DIVISION shall:

(a) manage eligibility determination under 47-1-111;

(b) manage contracting under 47-1-216;

(c) manage training pursuant to 47-1-210; ~~and~~

(D) PROVIDE ADMINISTRATIVE SUPPORT TO THE DIRECTOR; AND

~~(d)~~(E) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(3) The central services ~~office~~ DIVISION shall establish for the office of state public defender:

(a) standard procedures to handle complaints about public defender performance and work with the ~~chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(4) The following expenses are payable by the central services ~~office~~ DIVISION if the expense is incurred at the request of a public defender and is authorized by the director:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(5) If the costs to be paid pursuant to subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(6) The department of administration established in 2-15-1001 shall provide central services support to the extent feasible and efficient.

NEW SECTION. **Section 27. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the ~~offices of chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted with in the system, identified by region, if appropriate, and office;

(v) the number of nonattorney staff employed or contracted with in the system, identified by region, if appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the ~~office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) ~~(a)~~ The office shall report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. THE REPORT MUST BE PROVIDED IN AN ELECTRONIC FORMAT.

~~(b) The office shall report to the governor and the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection was made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid.~~

~~(c) Reports under this subsection (2) must be provided in an electronic format.~~

Section 28. Section 47-1-201, MCA, is amended to read:

"47-1-201. ~~Office of state chief public defender~~ PUBLIC DEFENDER DIVISION -- personnel -- compensation -- expenses ~~-- reports~~. (1) There is ~~an office of state chief public defender~~ A PUBLIC DEFENDER DIVISION. ~~The office must be located in Butte, Montana.~~ The head of the ~~office is the chief public defender~~ DIVISION IS THE PUBLIC DEFENDER DIVISION ADMINISTRATOR, who is supervised by the ~~commission~~ director.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state. The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The position of ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire or contract for and supervise other personnel necessary to perform the function of the ~~office of state chief public defender~~ PUBLIC DEFENDER DIVISION ~~and to implement the provisions of this chapter~~, including but not limited to:

(a) ~~the following personnel who are exempt from the state classification and pay plan as provided in~~

~~2-18-103:~~

~~(i) an administrative director, who must be experienced in business management and contract management;~~

~~(ii) a chief contract manager to oversee and enforce the contracting program;~~

~~(iii) a training coordinator, appointed as provided in 47-1-210;~~

~~(iv)~~ deputy public defenders, as provided in 47-1-215, who are exempt from the state classification and pay plan as provided in 2-18-103;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the ~~office of chief public defender~~ PUBLIC DEFENDER DIVISION.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

~~(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

~~(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and~~

~~(b) transcript fees, as provided in 3-5-604.~~

~~(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.~~

~~(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

~~(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.~~

~~(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.~~

~~(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are~~

~~inactive, and the average number of days between case opening and closure for each case type.~~

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.~~"

Section 29. Section 47-1-202, MCA, is amended to read:

"47-1-202. ~~Chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR -- duties. (1) In addition to the duties provided in 47-1-201~~,~~ and subject to approval by the director, the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall:

(a) ~~act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~

~~(b) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

~~(c)~~ develop and ~~present for the commission's approval~~ implement a regional strategic plan for the delivery of public defender services;

~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

~~(e)~~(b) ~~establish~~ ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services ~~office~~ DIVISION established in ~~[section 27]~~ [SECTION 26];

~~(f)~~(c) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(g)~~(d) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(h)~~(e) work with the training coordinator provided for in 47-1-210 to establish and supervise a training

and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(f) work with the central services ~~office~~ DIVISION to establish procedures to handle complaints about public defender performance ~~and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;~~

~~(j) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system~~; and

~~(k)~~(g) perform all other duties assigned by the ~~commission~~ director pursuant to this chapter.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR may not maintain a client caseload."

Section 30. Section 47-1-205, MCA, is amended to read:

"47-1-205. ~~Office of chief appellate defender -- chief appellate defender~~ APPELLATE DEFENDER DIVISION -- DIVISION ADMINISTRATOR. (1) There is an ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION must be located in Helena, Montana.

(2) (a) The ~~commission~~ director shall hire and supervise ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR to manage and supervise the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state.

(c) The position of ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103.

(3) ~~The~~ Subject to approval by the director, the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR shall:

(a) direct, manage, and supervise all public defender services provided by the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION~~, including budgeting, reporting, and related functions~~;

(b) ensure that when a court orders the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(1)(f)~~(1)(c) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION personnel ~~as authorized by the appellate defender~~;

(e) contract for services as provided in 47-1-216 and as authorized by the ~~commission~~ director according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION and submit records and reports to the ~~commission as requested through the office of state public defender~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26];

(g) implement standards and procedures established by the ~~commission~~ director for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION;

(h) maintain a minimum client caseload as determined by the ~~commission~~ director;

(i) confer with the ~~chief public defender~~ director on budgetary issues and submit budgetary requests and information for the reports required by law or by the governor ~~through the chief public defender~~; and

(j) perform all other duties assigned to the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR by the ~~commission~~ director."

Section 31. Section 47-1-210, MCA, is amended to read:

"47-1-210. Training program -- coordinator. (1) There is within the ~~office~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26] a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR shall ~~appoint~~ hire the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender; and

(e) ~~apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and~~

~~(f)~~ perform other duties assigned by the ~~chief public defender~~ director."

Section 32. Section 47-1-215, MCA, is amended to read:

"47-1-215. Regional offices -- deputy public defenders -- office space. (1) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) ~~Each~~ Subject to approval by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders ~~the office to assign~~ the assignment of counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(1)(f)~~(1)(c);

(d) hire and supervise the work of regional office personnel as authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR;

(e) coordinate with the contract manager provided for in 47-1-216 to contract for services as ~~provided in 47-1-216 and~~ authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR according to the strategic plan approved by the ~~commission~~ director;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR as requested;

(g) implement the standards and procedures established by the ~~commission~~ director and ~~chief public defender~~ THE PUBLIC DEFENDER DIVISION ADMINISTRATOR for the region;

(h) maintain a minimum client caseload as determined by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; and

(i) perform all other duties as assigned by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office of state public defender and may not be considered a county or city obligation."

Section 33. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services ~~-- rules~~. (1) The ~~commission~~ director~~, in consultation with the commission,~~ shall establish standards for a statewide contracted services program ~~that ensures~~ to be managed by the central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26]. The director shall ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region ~~and that contracting for appellate defender services is done fairly and consistently statewide~~.

(2) There is a contract manager position in the central services ~~office~~ DIVISION ~~The chief contract manager shall oversee the contracting program and may not maintain a client caseload~~ hired by the ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR. The contract manager is responsible for the administrative oversight of contracting for attorney and nonattorney support for units of the office of state public defender.

(3) ~~The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state.~~ All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) ~~(a) Except as provided in subsection (4)(b), contracts~~ CONTRACTS may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the

number of cases assigned.

~~(b) Contracts for legal representation of individuals appearing before the following specialty courts may be awarded based on a fixed fee:~~.

~~(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;~~

~~(ii) a mental health treatment court, as defined in 46-1-1203;~~

~~(iii) a DUI court, as defined in 61-5-231;~~

~~(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or~~

~~(v) a veterans treatment court.~~

~~(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the commission~~ director ~~and without verifiable assurances that effective representation will be provided.~~

(5) Contracting for ~~public defender and appellate defender services~~ attorney services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel ~~that meets the standards established by the commission~~;

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; ~~and~~

(h) continuing education requirements ~~in accordance with standards set by the commission~~; AND

(I) COST OF THE SERVICES.

(6) The ~~chief public defender, deputy public defenders, and the chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, DEPUTY PUBLIC DEFENDERS, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR shall ~~provide for contract oversight and enforcement to ensure compliance with established standards~~ supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ director shall ~~adopt rules to~~ establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

(9) The ~~commission~~ director shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The ~~commission~~ director shall ~~implement rules requiring~~ ensure that there are procedures for conducting an evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

Section 34. Section 50-20-509, MCA, is amended to read:

"50-20-509. Procedure for judicial waiver of consent. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the

consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

Section 35. Section 53-9-104, MCA, is amended to read:

"53-9-104. (Temporary) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for

in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-9-104. (Effective July 1, 2021) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying

crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 36. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary

commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 37. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as

provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the minor."

Section 38. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

Section 39. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of

respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 40. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics -- rights. (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the

person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further

period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for the person regardless of the person's

wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 41. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 42. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 43. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize

the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 44. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order

has been established, the court shall make an appointment or other appropriate protective order."

NEW SECTION. **SECTION 45. REPEALER.** THE FOLLOWING SECTION OF THE MONTANA CODE ANNOTATED IS REPEALED:

2-15-1028. PUBLIC DEFENDER COMMISSION.

NEW SECTION. **Section 46. Transition -- appointment of director of office of state public defender.** ~~The governor shall appoint the director of the office of state public defender provided for in [section 3] no later than January 1, 2018.~~ (1) THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL HIRE THE DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER BY JULY 1, 2017. WITHIN 30 DAYS OF [THE EFFECTIVE DATE OF THIS SECTION], THE PUBLIC DEFENDER ADVISORY COMMISSION SHALL SUBMIT A LIST OF NOMINEES FOR THE POSITION OF DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL CONSIDER THE NOMINEES ON THE LIST BUT MAY HIRE A DIRECTOR WHOSE NAME WAS NOT INCLUDED ON THE LIST.

(2) BY SEPTEMBER 1, 2018, THE OFFICE OF STATE PUBLIC DEFENDER SHALL REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE ON THE STATUS OF THE TERMINATION OF THE PUBLIC DEFENDER ADVISORY COMMISSION.

NEW SECTION. **Section 47. Codification instruction -- instructions to code commissioner.** (1) ~~[Section 3]~~ [SECTION 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to ~~[section 3]~~ [SECTION 1].

(2) ~~[Sections 27 and 28]~~ [SECTIONS 26 AND 27] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to ~~[sections 27 and 28]~~ [SECTIONS 26 AND 27].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and codify it in the same part as ~~[section 3]~~ [SECTION 1];

(b) renumber 47-1-210 and 47-1-216 and codify them in Title 47, chapter 1, part 1;

(c) renumber 47-1-205 and codify it in a new part 3 in Title 47, chapter 1;

(d) renumber 47-1-118 and codify it in a new part 4 in Title 47, chapter 1; and

(e) change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2017 legislature, to reflect the new section numbers

assigned pursuant to this section.

NEW SECTION. **SECTION 48. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

~~NEW SECTION. **Section 49. Contingent voidness.** If funding for public defender services organized under a department director is not provided for in House Bill No. 2 or another appropriation bill, then [this act] is void.~~

NEW SECTION. **SECTION 49. EFFECTIVE DATES.** (1) EXCEPT AS PROVIDED IN ~~SUBSECTIONS (2) AND (3)~~ SUBSECTION (2), [THIS ACT] IS EFFECTIVE JULY 1, 2017.

(2) [SECTIONS 1 AND 46] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

~~(3) [SECTION 45] IS EFFECTIVE JULY 1, 2019.~~

- END -

HOUSE BILL NO. 77

INTRODUCED BY R. BRODEHL

BY REQUEST OF THE TASK FORCE ON STATE PUBLIC DEFENDER OPERATIONS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A ~~DEPARTMENT-LEVEL~~ DIRECTOR HIRED BY THE ~~GOVERNOR~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY AND TEMPORARY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES ~~OFFICE~~ DIVISION UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES ~~OFFICE~~ DIVISION; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS ~~2-15-104, 2-15-111,~~ 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-111, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; ~~AND~~ REPEALING SECTION 2-15-1028, MCA; ~~PROVIDING FOR CONTINGENT VOIDNESS;~~ AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 2-15-104, MCA, is amended to read:~~

~~**"2-15-104. Structure of executive branch.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:~~

~~(a) department of administration;~~

~~(b) department of military affairs;~~

~~(c) department of revenue;~~

~~(d) state board of education;~~

~~(e) department of labor and industry;~~

~~(f) department of commerce;~~

~~(g) department of justice;~~

~~(h) department of public health and human services;~~

~~(i) department of corrections;~~

~~(j) department of transportation;~~

~~(k) department of public service regulation;~~

~~(l) department of agriculture;~~

~~(m) department of livestock;~~

~~(n) department of natural resources and conservation;~~

~~(o) department of fish, wildlife, and parks;~~

~~(p) department of environmental quality;~~

~~(q) office of state public defender~~.

~~(2) For its internal structure, each department~~, except as provided by law for the office of state public ~~defender,~~ shall adhere to the following standard terms:

~~(a) The principal unit of a department is a division. Each division is headed by an administrator.~~

~~(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.~~

~~(c) The principal unit of a bureau is a section. Each section is headed by a supervisor."~~

~~**Section 2.** Section 2-15-111, MCA, is amended to read:~~

~~**"2-15-111. Appointment and qualifications of department heads -- exception.** (1)~~ Except as ~~provided in [section 3]:~~

~~(a)~~ At the beginning of each gubernatorial term, the governor shall appoint each department head who ~~serves as a director as provided in this chapter.~~

~~(2)~~(b) ~~An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If~~

~~the senate does not confirm the appointment of a director, the governor shall make a new appointment.~~

~~(3)(c) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.~~

~~(4)(2) The governor shall select a director on the basis of the person's professional and administrative knowledge and experience and additional qualifications that are provided by law.~~

~~(5)(3) If~~ Except as provided in [section 3], if ~~a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.~~

~~(6)(4) Heads of departments who are not directors must be elected or appointed and serve and have their vacancies filled as provided by law."~~

NEW SECTION. **Section 1. Office of state public defender -- head.** ~~(1)~~ There is an office of state public defender. The head of the office is a director. The director is hired by the ~~governor from a list of nominees submitted as provided in subsection (2)~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. The director is not subject to confirmation by the senate and may be removed by the ~~governor~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION only for cause.

~~(2) The public defender advisory commission provided for in 2-15-1028 shall submit to the governor a list of three nominees for director of the office of state public defender. If the governor does not hire any individual from the initial list, the governor may request a second list of three nominees and shall hire the director from that list.~~

Section 2. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender advisory commission. ~~(1)~~ There is a public defender advisory commission attached to the office of state public defender established in ~~[section 3]~~ [SECTION 1].

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) ~~(a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and~~

~~(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to~~

~~maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~ The commission shall serve in an advisory capacity, as defined in 2-15-102, to the director of the office of state public defender.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in ~~47-1-201 [section 3]~~ [SECTION 1], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The director of the office of state public defender may call special meetings of the commission as needed."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public

education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender established in ~~[section 3]~~ [SECTION 1]:

(a) the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR ~~appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ appointed as provided in 47-1-105;

(b) the ~~employees in the positions listed~~ deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

~~(22)~~(c) the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR ~~in the office of appellate defender~~ appointed as provided in 47-1-105; ~~and~~

(d) the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR appointed as provided in 47-1-105; AND

(E) THE DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER PROVIDED FOR IN [SECTION 1]."

Section 4. Section 3-5-511, MCA, is amended to read:

"3-5-511. Witnesses' warrants -- state reimbursement. (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in 47-1-103, and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 5. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of district court proceedings -- costs. (1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.

(2) Compensation for transcripts under this section is as follows:

(a) (i) Ordinary transcript - $2 per page for the original furnished to a state or local government agency, $2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(ii) Expedited transcript - $4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(iii) Daily transcript - $5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

(ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of

labor statistics of the United States department of labor.

(iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

(3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (2) must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.

(4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.

(b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(c) In civil cases, all transcripts required by the county must be furnished and must be paid for by the county pursuant to subsection (2).

(5) (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the office of state public defender, as provided in ~~47-1-201 [section 27]~~ [SECTION 26].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.

(6) As used in this section, the following definitions apply:

(a) "Copy" means any replication of the original transcript regardless of the medium.

(b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

(c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.

(d) "Ordinary transcript" means a transcript of all or part of the proceedings."

Section 6. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court

program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 7. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the state tax appeal board established in 2-15-1015; and

~~(iii) the office of state public defender; and~~

~~(iv)~~(iii) the division of banking and financial institutions;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 8. Section 17-7-154, MCA, is amended to read:

"17-7-154. (Temporary) Expenditures for district courts and office of public defender. Expenditure comparisons of state resources to local government must include state expenditures for the district courts and the office of state public defender but not for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. (Terminates June 30, 2025--sec. 7, Ch. 232, L. 2015.)"

Section 9. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing -- exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in ~~47-1-201(5)~~ ~~[section 27]~~ [SECTION 26].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 10. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1].

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604."

Section 11. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 12. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the minor parent."

Section 13. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings

conducted under this part."

Section 14. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 15. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

Section 16. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be paid by the office of state public defender as provided for in ~~47-1-201~~ ~~[section 27]~~ [SECTION 26]."

Section 17. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

SECTION 18. SECTION 46-21-111, MCA, IS AMENDED TO READ:

"46-21-111. Preservation and disposal of biological evidence obtained in criminal proceeding. (1) (a) A law enforcement agency shall preserve biological evidence that the agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(b) An agency may propose to dispose of biological evidence before the expiration of the time period described in subsection (1)(a) if the agency notifies the convicted person, the attorney of record for the convicted person, and the Montana ~~chief~~ public defender division administrator. The notification must include a description of the biological evidence, a statement that the agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period, the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required

by the interests of justice and the integrity of the criminal justice system.

(c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

Section 19. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice

require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the

court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 20. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

~~(1) "Commission" means the public defender advisory commission established in 2-15-1028.~~

~~(2)~~(1) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court, or a city court.

~~(3)~~(2) "Director" means the director of the office of state public defender hired by the ~~governor pursuant to [section 3]~~ DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION AS PROVIDED IN [SECTION 1].

~~(4)~~(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)(5)~~(4) "Office" means the office of state public defender established in ~~47-1-201 [section 3]~~ [SECTION 1].

~~(5)(6)~~(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION AND THE CONFLICT DEFENDER DIVISION.

~~(6)(7)~~(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 21. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services

in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ director.

(2) The ~~commission~~ director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest.

~~(6) A PUBLIC DEFENDER MAY NOT BE ASSIGNED TO ACT AS COURT-APPOINTED COUNSEL IN A PROCEEDING UNDER THE DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT, TITLE 46, CHAPTER 1, PART 11, OR UNDER THE MENTAL HEALTH TREATMENT COURT ACT, TITLE 46, CHAPTER 1, PART 12.~~

~~(6) A PUBLIC DEFENDER MAY NOT BE ASSIGNED TO ACT AS COURT-APPOINTED COUNSEL IN A PROCEEDING UNDER~~

~~THE DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT, TITLE 46, CHAPTER 1, PART 11, OR UNDER THE MENTAL HEALTH TREATMENT COURT ACT, TITLE 46, CHAPTER 1, PART 12.~~"

Section 22. Section 47-1-105, MCA, is amended to read:

"47-1-105. ~~Commission~~ Director -- duties ~~-- report~~ -- REPORT -- rules. (1) The ~~commission~~ director shall supervise and direct the system ~~in consultation with the commission~~. In addition to other duties assigned pursuant to this chapter, the ~~commission~~ director shall:

~~(1)~~ (a) establish the qualifications, duties, and compensation of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-201, appoint ~~a~~ the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; ~~and~~

(b) establish the qualifications, duties, and compensation of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR~~, as~~ provided for in 47-1-205, appoint ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR; and

(c) establish the qualifications, duties, and compensation of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR provided for in 47-1-118, appoint the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR after considering qualified applicants, and regularly evaluate the performance of the ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR.

(2) The director shall establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the ~~chief public defender, the administrative director~~ administrator of the central services office established in [section 27]~~, and the chief appellate defender, and the chief conflict defender~~; PUBLIC DEFENDER DIVISION ADMINISTRATOR, THE CENTRAL SERVICES DIVISION ADMINISTRATOR, THE APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND THE CONFLICT DEFENDER DIVISION ADMINISTRATOR;

~~(4)~~(b) review and approve any proposal to create permanent staff positions;

~~(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~ (c) establish policies and procedures for handling excess caseloads; ~~and~~

~~(7)~~(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system~~.~~; AND

(E) EXAMINE WORKLOADS AND WORKLOAD STANDARDS FOR ALL LEVELS WITHIN THE OFFICE OF STATE PUBLIC DEFENDER AND INCLUDE ITS FINDINGS IN THE BIENNIAL REPORT PROVIDED FOR IN [SECTION 28].

~~(8)~~(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter~~; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~(c) the number of deputy public defenders and the region supervised by each;~~

~~(d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~(e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~(f) the number of new cases in which counsel was assigned to represent a party, identified by region,~~

~~court, and case type;~~

~~(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~(h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;~~

~~(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and~~

~~(k) detailed expenditure data by court and case type~~."

Section 23. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111.

(3) BY AUGUST 1 OF EACH YEAR, THE STATE TREASURER SHALL TRANSFER THE UNENCUMBERED BALANCE IN THE PUBLIC DEFENDER ACCOUNT TO THE STATE GENERAL FUND."

Section 24. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The

propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ central services ~~office~~ DIVISION provided for in ~~[section 27]~~ [SECTION 26]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) ~~THE CENTRAL SERVICES DIVISION SHALL REVIEW ALL APPLICATIONS FOR COURT-APPOINTED COUNSEL IN ORDER TO DETERMINE WHETHER APPLICANTS ARE ELIGIBLE.~~ THE CENTRAL SERVICES DIVISION SHALL ENSURE THAT

DETERMINATIONS BASED ON PRESUMPTIVE ELIGIBILITY, INCOME AND ASSETS, AND SUBSTANTIAL HARDSHIPS ARE DONE IN A CONSISTENT MANNER THROUGHOUT THE STATE. THE CENTRAL SERVICES DIVISION SHALL VERIFY INFORMATION ON THE APPLICATION FORM FOR ALL APPLICANTS SEEKING COUNSEL UNDER SUBSECTION (3)(B).

~~(6)~~(7) The ~~commission office~~ CENTRAL SERVICES DIVISION shall establish procedures and adopt rules to implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is DONE TIMELY AND IS fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section."

Section 25. Section 47-1-118, MCA, is amended to read:

"47-1-118. Conflicts of interest ~~-- chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR. (1) The ~~commission~~ director shall establish a conflicts ~~office to~~ DEFENDER DIVISION ~~contract for attorneys to represent~~ to provide for the representation of indigent defendants in circumstances ~~where~~ in which, because of conflict of interest, the ~~public defender program office of chief public defender or the office of chief appellate defender~~ PUBLIC DEFENDER DIVISION OR THE APPELLATE DEFENDER DIVISION is unable to provide representation to a defendant.

(2) ~~The commission shall appoint a conflicts manager to oversee the office~~ The position of ~~chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR is appointed by the director under 47-1-105 and is exempt from the state classification and pay plan as provided in 2-18-103. The ~~conflicts manager chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR reports directly to the ~~commission~~ director and not to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) The ~~conflicts manager chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR may not

handle cases.

~~(3)~~(4) All attorneys ~~contracted for~~ handling conflict of interest cases shall report to the ~~conflicts manager chief conflict defender~~ CONFLICT DEFENDER DIVISION ADMINISTRATOR."

NEW SECTION. **Section 26. Central services ~~office~~ DIVISION -- responsibilities -- department of administration to support**. (1) There is a central services ~~office~~ DIVISION in the office of state public defender. The ~~office~~ DIVISION must be located in Butte, Montana. The central services ~~office~~ DIVISION is supervised by an administrator hired by the director.

(2) The central services ~~office~~ DIVISION shall:

(a) manage eligibility determination under 47-1-111;

(b) manage contracting under 47-1-216;

(c) manage training pursuant to 47-1-210; ~~and~~

(D) PROVIDE ADMINISTRATIVE SUPPORT TO THE DIRECTOR; AND

~~(d)~~(E) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(3) The central services ~~office~~ DIVISION shall establish for the office of state public defender:

(a) standard procedures to handle complaints about public defender performance and work with the ~~chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(4) The following expenses are payable by the central services ~~office~~ DIVISION if the expense is incurred at the request of a public defender and is authorized by the director:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(5) If the costs to be paid pursuant to subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(6) The department of administration established in 2-15-1001 shall provide central services support to the extent feasible and efficient.

NEW SECTION. **Section 27. Reports.** (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the ~~offices of chief public defender, chief appellate defender, and chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted with in the system, identified by region, if appropriate, and office;

(v) the number of nonattorney staff employed or contracted with in the system, identified by region, if appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the ~~office of chief public defender, the office of chief appellate defender, and the office of chief conflict defender~~ PUBLIC DEFENDER DIVISION, THE APPELLATE DEFENDER DIVISION, AND THE CONFLICT DEFENDER DIVISION identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) ~~(a)~~ The office shall report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. THE REPORT MUST BE PROVIDED IN AN ELECTRONIC FORMAT.

~~(b) The office shall report to the governor and the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection was made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid.~~

~~(c) Reports under this subsection (2) must be provided in an electronic format.~~

Section 28. Section 47-1-201, MCA, is amended to read:

"47-1-201. ~~Office of state chief public defender~~ PUBLIC DEFENDER DIVISION -- personnel -- compensation -- expenses ~~-- reports~~. (1) There is ~~an office of state chief public defender~~ A PUBLIC DEFENDER DIVISION. ~~The office must be located in Butte, Montana.~~ The head of the ~~office is the chief public defender~~ DIVISION IS THE PUBLIC DEFENDER DIVISION ADMINISTRATOR, who is supervised by the ~~commission~~ director.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state. The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The position of ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire or contract for and supervise other personnel necessary to perform the function of the ~~office of state chief public defender~~ PUBLIC DEFENDER DIVISION ~~and to implement the provisions of this chapter~~, including but not limited to:

(a) ~~the following personnel who are exempt from the state classification and pay plan as provided in~~

~~2-18-103:~~

~~(i) an administrative director, who must be experienced in business management and contract management;~~

~~(ii) a chief contract manager to oversee and enforce the contracting program;~~

~~(iii) a training coordinator, appointed as provided in 47-1-210;~~

~~(iv)~~ deputy public defenders, as provided in 47-1-215, who are exempt from the state classification and pay plan as provided in 2-18-103;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the ~~office of chief public defender~~ PUBLIC DEFENDER DIVISION.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

~~(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

~~(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and~~

~~(b) transcript fees, as provided in 3-5-604.~~

~~(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.~~

~~(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

~~(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.~~

~~(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.~~

~~(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are~~

~~inactive, and the average number of days between case opening and closure for each case type.~~

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.~~"

Section 29. Section 47-1-202, MCA, is amended to read:

"47-1-202. ~~Chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR -- duties. (1) In addition to the duties provided in 47-1-201~~,~~ and subject to approval by the director, the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall:

(a) ~~act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~

~~(b) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

~~(c)~~ develop and ~~present for the commission's approval~~ implement a regional strategic plan for the delivery of public defender services;

~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

~~(e)~~(b) ~~establish~~ ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services ~~office~~ DIVISION established in ~~[section 27]~~ [SECTION 26];

~~(f)~~(c) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(g)~~(d) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(h)~~(e) work with the training coordinator provided for in 47-1-210 to establish and supervise a training

and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(f) work with the central services ~~office~~ DIVISION to establish procedures to handle complaints about public defender performance ~~and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;~~

~~(j) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system~~; and

~~(k)~~(g) perform all other duties assigned by the ~~commission~~ director pursuant to this chapter.

(2) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR may not maintain a client caseload."

Section 30. Section 47-1-205, MCA, is amended to read:

"47-1-205. ~~Office of chief appellate defender -- chief appellate defender~~ APPELLATE DEFENDER DIVISION -- DIVISION ADMINISTRATOR. (1) There is an ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION must be located in Helena, Montana.

(2) (a) The ~~commission~~ director shall hire and supervise ~~a~~ the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR to manage and supervise the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION. The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is appointed by and serves at the pleasure of the ~~commission~~ director. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR must be an attorney licensed to practice law in the state.

(c) The position of ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR is exempt from the state classification and pay plan as provided in 2-18-103.

(3) ~~The~~ Subject to approval by the director, the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR shall:

(a) direct, manage, and supervise all public defender services provided by the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION~~, including budgeting, reporting, and related functions~~;

(b) ensure that when a court orders the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(1)(f)~~(1)(c) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION personnel ~~as authorized by the appellate defender~~;

(e) contract for services as provided in 47-1-216 and as authorized by the ~~commission~~ director according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION and submit records and reports to the ~~commission as requested through the office of state public defender~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26];

(g) implement standards and procedures established by the ~~commission~~ director for the ~~office of chief appellate defender~~ APPELLATE DEFENDER DIVISION;

(h) maintain a minimum client caseload as determined by the ~~commission~~ director;

(i) confer with the ~~chief public defender~~ director on budgetary issues and submit budgetary requests and information for the reports required by law or by the governor ~~through the chief public defender~~; and

(j) perform all other duties assigned to the ~~chief appellate defender~~ APPELLATE DEFENDER DIVISION ADMINISTRATOR by the ~~commission~~ director."

Section 31. Section 47-1-210, MCA, is amended to read:

"47-1-210. Training program -- coordinator. (1) There is within the ~~office~~ central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26] a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR shall ~~appoint~~ hire the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender; and

(e) ~~apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and~~

~~(f)~~ perform other duties assigned by the ~~chief public defender~~ director."

Section 32. Section 47-1-215, MCA, is amended to read:

"47-1-215. Regional offices -- deputy public defenders -- office space. (1) The ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) ~~Each~~ Subject to approval by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders ~~the office to assign~~ the assignment of counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(1)(f)~~(1)(c);

(d) hire and supervise the work of regional office personnel as authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR;

(e) coordinate with the contract manager provided for in 47-1-216 to contract for services as ~~provided in 47-1-216 and~~ authorized by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR according to the strategic plan approved by the ~~commission~~ director;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR as requested;

(g) implement the standards and procedures established by the ~~commission~~ director and ~~chief public defender~~ THE PUBLIC DEFENDER DIVISION ADMINISTRATOR for the region;

(h) maintain a minimum client caseload as determined by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR; and

(i) perform all other duties as assigned by the ~~chief public defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office of state public defender and may not be considered a county or city obligation."

Section 33. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services ~~-- rules~~. (1) The ~~commission~~ director~~, in consultation with the commission,~~ shall establish standards for a statewide contracted services program ~~that ensures~~ to be managed by the central services ~~office provided for in [section 27]~~ DIVISION PROVIDED FOR IN [SECTION 26]. The director shall ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region ~~and that contracting for appellate defender services is done fairly and consistently statewide~~.

(2) There is a contract manager position in the central services ~~office~~ DIVISION ~~The chief contract manager shall oversee the contracting program and may not maintain a client caseload~~ hired by the ~~administrator of the central services office~~ CENTRAL SERVICES DIVISION ADMINISTRATOR. The contract manager is responsible for the administrative oversight of contracting for attorney and nonattorney support for units of the office of state public defender.

(3) ~~The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state.~~ All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) ~~(a) Except as provided in subsection (4)(b), contracts~~ CONTRACTS may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the

number of cases assigned.

~~(b) Contracts for legal representation of individuals appearing before the following specialty courts may be awarded based on a fixed fee:~~.

~~(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;~~

~~(ii) a mental health treatment court, as defined in 46-1-1203;~~

~~(iii) a DUI court, as defined in 61-5-231;~~

~~(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or~~

~~(v) a veterans treatment court.~~

~~(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the commission~~ director ~~and without verifiable assurances that effective representation will be provided.~~

(5) Contracting for ~~public defender and appellate defender services~~ attorney services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel ~~that meets the standards established by the commission~~;

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; ~~and~~

(h) continuing education requirements ~~in accordance with standards set by the commission~~; AND

(I) COST OF THE SERVICES.

(6) The ~~chief public defender, deputy public defenders, and the chief appellate defender~~, ~~and chief conflict defender~~ PUBLIC DEFENDER DIVISION ADMINISTRATOR, DEPUTY PUBLIC DEFENDERS, APPELLATE DEFENDER DIVISION ADMINISTRATOR, AND CONFLICT DEFENDER DIVISION ADMINISTRATOR shall ~~provide for contract oversight and enforcement to ensure compliance with established standards~~ supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ director shall ~~adopt rules to~~ establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

(9) The ~~commission~~ director shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The ~~commission~~ director shall ~~implement rules requiring~~ ensure that there are procedures for conducting an evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

Section 34. Section 50-20-509, MCA, is amended to read:

"50-20-509. Procedure for judicial waiver of consent. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the

consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

Section 35. Section 53-9-104, MCA, is amended to read:

"53-9-104. (Temporary) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for

in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec. 27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-9-104. (Effective July 1, 2021) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying

crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 36. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary

commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 37. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as

provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel for the minor."

Section 38. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

Section 39. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of

respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 40. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics -- rights. (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the

person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further

period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel for the person regardless of the person's

wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 41. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201 [section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 42. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 43. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview -- procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize

the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 44. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ ~~[section 3]~~ [SECTION 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order

has been established, the court shall make an appointment or other appropriate protective order."

NEW SECTION. **SECTION 45. REPEALER.** THE FOLLOWING SECTION OF THE MONTANA CODE ANNOTATED IS REPEALED:

2-15-1028. PUBLIC DEFENDER COMMISSION.

NEW SECTION. **Section 46. Transition -- appointment of director of office of state public defender.** ~~The governor shall appoint the director of the office of state public defender provided for in [section 3] no later than January 1, 2018.~~ (1) THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL HIRE THE DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER BY JULY 1, 2017. WITHIN 30 DAYS OF [THE EFFECTIVE DATE OF THIS SECTION], THE PUBLIC DEFENDER ADVISORY COMMISSION SHALL SUBMIT A LIST OF NOMINEES FOR THE POSITION OF DIRECTOR OF THE OFFICE OF STATE PUBLIC DEFENDER TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION. THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION SHALL CONSIDER THE NOMINEES ON THE LIST BUT MAY HIRE A DIRECTOR WHOSE NAME WAS NOT INCLUDED ON THE LIST.

(2) BY SEPTEMBER 1, 2018, THE OFFICE OF STATE PUBLIC DEFENDER SHALL REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE ON THE STATUS OF THE TERMINATION OF THE PUBLIC DEFENDER ADVISORY COMMISSION.

NEW SECTION. **Section 47. Codification instruction -- instructions to code commissioner.** (1) ~~[Section 3]~~ [SECTION 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to ~~[section 3]~~ [SECTION 1].

(2) ~~[Sections 27 and 28]~~ [SECTIONS 26 AND 27] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to ~~[sections 27 and 28]~~ [SECTIONS 26 AND 27].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and codify it in the same part as ~~[section 3]~~ [SECTION 1];

(b) renumber 47-1-210 and 47-1-216 and codify them in Title 47, chapter 1, part 1;

(c) renumber 47-1-205 and codify it in a new part 3 in Title 47, chapter 1;

(d) renumber 47-1-118 and codify it in a new part 4 in Title 47, chapter 1; and

(e) change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2017 legislature, to reflect the new section numbers

assigned pursuant to this section.

NEW SECTION. **SECTION 48. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

~~NEW SECTION. **Section 49. Contingent voidness.** If funding for public defender services organized under a department director is not provided for in House Bill No. 2 or another appropriation bill, then [this act] is void.~~

NEW SECTION. **SECTION 49. EFFECTIVE DATES.** (1) EXCEPT AS PROVIDED IN ~~SUBSECTIONS (2) AND (3)~~ SUBSECTION (2), [THIS ACT] IS EFFECTIVE JULY 1, 2017.

(2) [SECTIONS 1 AND 46] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

~~(3) [SECTION 45] IS EFFECTIVE JULY 1, 2019.~~

- END -

AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A DIRECTOR HIRED BY THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY AND TEMPORARY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES DIVISION UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES DIVISION; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-111, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; REPEALING SECTION 2-15-1028, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Office of state public defender -- head. There is an office of state public defender. The head of the office is a director. The director is hired by the director of the department of administration. The director is not subject to confirmation by the senate and may be removed by the director of the department of administration only for cause.

Section 2. Section 2-15-1028, MCA, is amended to read:

"2-15-1028. Public defender advisory commission. (1) There is a public defender advisory commission attached to the office of state public defender established in [section 1].

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:

(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) ~~(a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:~~

~~(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the~~

~~department; and~~

~~(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6)(a)(ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.~~

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~ The commission shall serve in an advisory capacity, as defined in 2-15-102, to the director of the office of state public defender.

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in ~~47-1-201~~ [section 1], a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall meet quarterly, establish procedures for the conduct of its affairs, and elect a presiding officer from among its members. The director of the office of state public defender may call special meetings of the commission as needed."

Section 3. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;

(19) chief information officer in the department of administration;

(20) chief business development officer and six professional staff positions in the office of economic development provided for in 2-15-218;

(21) the following positions in the office of state public defender established in [section 1]:

(a) the ~~chief public defender~~ public defender division administrator ~~appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and~~ appointed as provided in 47-1-105;

(b) the ~~employees in the positions listed~~ deputy public defenders provided for in 47-1-201(3)(a), who are appointed by the ~~chief public defender~~ public defender division administrator; ~~and~~

~~(22)~~(c) the ~~chief appellate defender~~ appellate defender division administrator ~~in the office of appellate~~

~~defender~~ appointed as provided in 47-1-105;

(d) the conflict defender division administrator appointed as provided in 47-1-105; and

(e) the director of the office of state public defender provided for in [section 1]."

Section 4. Section 3-5-511, MCA, is amended to read:

"3-5-511. Witnesses' warrants -- state reimbursement. (1) The witnesses in criminal actions, witnesses called by a public defender, as defined in 47-1-103, and witnesses called in a grand jury proceeding shall report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk shall give to the witness a county warrant, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due pursuant to Title 26, chapter 2, part 5, and 46-15-116.

(3) The state shall reimburse the clerk for the amount specified in the warrant as follows:

(a) if the witness was subpoenaed by the prosecution in a criminal proceeding or in a grand jury or by an indigent defendant acting pro se, the amount must be reimbursed by the office of court administrator as provided in 3-5-901; or

(b) if the witness was subpoenaed by a public defender, the amount must be reimbursed by the office of state public defender as provided in ~~47-1-201~~ [section 26]."

Section 5. Section 3-5-604, MCA, is amended to read:

"3-5-604. Court reporters -- transcript of district court proceedings -- costs. (1) When a transcript of the testimony and proceedings of a trial or hearing or a part of a trial or hearing is requested, a court reporter shall furnish the transcript to the requester with all reasonable diligence. The court reporter shall submit an invoice with the transcript when it is furnished. The court reporter may withhold delivery of the transcript until the transcription fee is paid or satisfactory arrangement for payment is made.

(2) Compensation for transcripts under this section is as follows:

(a) (i) Ordinary transcript - $2 per page for the original furnished to a state or local government agency, $2.50 per page for the original furnished to any other party, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(ii) Expedited transcript - $4 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(iii) Daily transcript - $5 per page for the original, 50 cents per page for the first copy to each party, and 25 cents per page for each additional copy to the same party.

(b) (i) The transcript cost is subject to a cost-of-living adjustment as provided in subsection (2)(b)(ii).

(ii) Prior to June 30 of each even-numbered year, the office of the court administrator shall determine whether an increase of the transcript amount specified in subsections (2)(a)(i) through (2)(a)(iii) must be made based on the increase, if any, from June of the preceding year to May of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(iii) The transcript amount established under subsection (2)(b)(ii) must be rounded to the nearest 5 cents and becomes effective as the new transcript cost, replacing the costs specified in subsections (2)(a)(i) through (2)(a)(iii), on July 1 of the year following the year the calculation was made. The office of the court administrator shall publish the adjusted costs on the judicial branch website prior to July 1 of each year.

(3) If the court reporter is not entitled to retain transcription fees under 3-5-601, the transcription fees required by subsection (2) must be paid to the clerk of district court, who shall forward the amount to the department of revenue for deposit in the state general fund.

(4) (a) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter shall furnish it. The transcription fee must be paid by the office of court administrator as provided in 3-5-901. The office of the court administrator may pay only for ordinary transcripts and may not pay for daily or expedited transcripts.

(b) If the judge requires a copy in a civil case to assist in rendering a decision, the reporter shall furnish the copy without charge.

(c) In civil cases, all transcripts required by the county must be furnished and must be paid for by the county pursuant to subsection (2).

(5) (a) If a public defender, as defined in 47-1-103, requests a transcript, the transcript must be furnished to the public defender and paid for by the office of state public defender, as provided in ~~47-1-201~~ [section 26].

(b) If an indigent party is eligible for a public defender but is acting pro se and requests a transcript, the transcript must be furnished to the party and paid for by the office of court administrator, as provided in 3-5-901.

(6) As used in this section, the following definitions apply:

(a) "Copy" means any replication of the original transcript regardless of the medium.

(b) "Daily transcript" means a transcript of all or part of the proceedings to be delivered the following day.

(c) "Expedited transcript" means a transcript of all or part of the proceedings to be delivered within 7 calendar days.

(d) "Ordinary transcript" means a transcript of all or part of the proceedings."

Section 6. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1) There is a state-funded district court program under the judicial branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

(a) salaries and benefits for:

(i) district court judges;

(ii) law clerks;

(iii) court reporters, as provided in 3-5-601;

(iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

(v) other employees of the district court;

(b) in criminal cases:

(i) fees for transcripts of proceedings, as provided in 3-5-604;

(ii) witness fees and necessary expenses, as provided in 46-15-116;

(iii) juror fees and necessary expenses;

(iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and

(v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility of the department of public health and human services and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);

(c) except as provided in ~~47-1-201(5)~~ [section 26], the district court expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title

46, chapter 22, and appeals from those proceedings;

(d) except as provided in ~~47-1-201(5)~~ [section 26], the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations;

(e) except as provided in ~~47-1-201(5)~~ [section 26], the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

(v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in ~~47-1-201(5)~~ [section 26], costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in ~~47-1-201(5)~~ [section 26], all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

Section 7. Section 5-5-228, MCA, is amended to read:

"5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the state tax appeal board established in 2-15-1015; and

~~(iii) the office of state public defender; and~~

~~(iv)~~(iii) the division of banking and financial institutions;

(b) department of military affairs; and

(c) office of the secretary of state.

(2) The committee shall:

(a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and

(d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.

(3) The committee may:

(a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request."

Section 8. Section 17-7-154, MCA, is amended to read:

"17-7-154. (Temporary) Expenditures for district courts and office of public defender. Expenditure comparisons of state resources to local government must include state expenditures for the district courts and the office of state public defender but not for the ~~office of appellate defender~~ appellate defender division. (Terminates June 30, 2025--sec. 7, Ch. 232, L. 2015.)"

Section 9. Section 26-2-506, MCA, is amended to read:

"26-2-506. Fees paid by party subpoenaing -- exceptions. (1) Except as provided in subsection (2), fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed.

(2) (a) When a witness is subpoenaed by a public defender, as defined in 47-1-103, the fees and expenses must be paid by the office of state public defender as provided in ~~47-1-201(5)~~ [section 26].

(b) In a criminal proceeding, when a witness is subpoenaed on behalf of the attorney general or a county attorney, the witness fees and expenses must be paid by the office of court administrator as provided in 3-5-901.

(c) In any proceeding in which a defendant or respondent is entitled to a public defender, as defined in 47-1-103, but is acting pro se, the witness fees and expenses must be paid by the office of court administrator, as provided in 3-5-901."

Section 10. Section 41-5-111, MCA, is amended to read:

"41-5-111. Court costs and expenses. (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in ~~47-1-201~~ [section 1].

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604."

Section 11. Section 41-5-1413, MCA, is amended to read:

"41-5-1413. Right to counsel -- assignment of counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication."

Section 12. Section 42-2-405, MCA, is amended to read:

"42-2-405. Relinquishment by minor parent -- separate legal counsel in direct parental placement adoption. (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under 42-7-101, subject to the limitations in 42-7-102.

(3) If in the court's discretion it is in the best interest of justice, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel to represent the minor parent."

Section 13. Section 46-4-304, MCA, is amended to read:

"46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part."

Section 14. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

Section 15. Section 46-8-104, MCA, is amended to read:

"46-8-104. Assignment of counsel after trial -- definition. (1) Any court of record may order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel, subject to the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent any petitioner or appellant in any postconviction action or proceeding brought under Title 46, chapter 21, if the petitioner or appellant is eligible for the appointment of counsel and:

(a) the district court determines that a hearing on the petition is required pursuant to 46-21-201;

(b) the ~~state public defender's office~~ office of state public defender requests appointment of a public defender and demonstrates good cause for the appointment;

(c) a statute specifically mandates the appointment of counsel;

(d) the petitioner or appellant is clearly entitled to counsel under either the United States or Montana constitution; or

(e) extraordinary circumstances exist that require the appointment of counsel to prevent a miscarriage of justice.

(2) An appointment of counsel made in the interests of justice, as provided in 46-21-201(2), may be made only when extraordinary circumstances exist.

(3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials or has a physical or mental condition or limitation that prevents the petitioner or appellant from reading or writing in English."

Section 16. Section 46-15-115, MCA, is amended to read:

"46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of a defendant acting pro se and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent but is acting pro se and is not represented by a public defender, as defined in 47-1-103, a court order must be obtained if more than six witnesses are to be subpoenaed.

(3) If the defendant is represented by a public defender, as defined in 47-1-103, witness costs must be

paid by the office of state public defender as provided for in ~~47-1-201~~ [section 26]."

Section 17. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty must be accepted, and a plea of nolo contendere may be accepted with the consent of the court and the prosecutor, when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) (a) Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction. The district court may remand the case, or the defendant may appeal the decision of the district court.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 18. Section 46-21-111, MCA, is amended to read:

"46-21-111. Preservation and disposal of biological evidence obtained in criminal proceeding.

(1) (a) A law enforcement agency shall preserve biological evidence that the agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(b) An agency may propose to dispose of biological evidence before the expiration of the time period described in subsection (1)(a) if the agency notifies the convicted person, the attorney of record for the convicted person, and the Montana ~~chief~~ public defender division administrator. The notification must include a description of the biological evidence, a statement that the agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period, the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

(c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

Section 19. Section 46-21-201, MCA, is amended to read:

"46-21-201. Proceedings on petition. (1) (a) Unless the petition and the files and records of the case

conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be sent to the county attorney in the county in which the conviction took place and to the attorney general and order that a responsive pleading be filed. The attorney general shall determine whether the attorney general will respond to the petition and, if so, whether the attorney general will respond in addition to or in place of the county attorney. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may proceed to determine the issue.

(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.

(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.

(2) If the death sentence has not been imposed and a hearing is required or if the interests of justice require, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel for a petitioner who qualifies for the assignment of counsel under Title 46, chapter 8, part 1, and the Montana Public Defender Act, Title 47, chapter 1.

(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent, as defined in 47-1-103, and wishes to file a petition under this chapter, the court will order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel who meets the Montana supreme court's standards and the office of state public defender's standards for competency of assigned counsel in proceedings under this chapter for an indigent person sentenced to death.

(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:

(i) order the office of state public defender to assign counsel to represent the person pending a determination by the office of state public defender that the person is indigent, as defined in 47-1-103, and that the person either has accepted the offer of assigned counsel or is unable to competently decide whether to

accept the offer of assigned counsel;

(ii) if the offer of assigned counsel is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or

(iii) if the petitioner is determined not to be indigent, deny or rescind any order requiring the assignment of counsel.

(c) The office of state public defender may not assign counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the assignment.

(d) If a petitioner entitled to counsel under this subsection (3) is determined not to be indigent but becomes indigent at any subsequent stage of the proceedings, the court shall order the assignment of counsel as provided in subsection (3)(b)(i).

(e) The expenses of counsel assigned pursuant to this subsection (3) must be paid by the office of state public defender.

(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.

(4) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner that the court has ordered or to which the parties have agreed.

(5) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(6) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge that may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

Section 20. Section 47-1-103, MCA, is amended to read:

"47-1-103. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

~~(1) "Commission" means the public defender commission established in 2-15-1028.~~

~~(2)~~(1) "Court" means the supreme court, a district court, a youth court, a justice's court, a municipal court,

or a city court.

~~(3)~~(2) "Director" means the director of the office of state public defender hired by the director of the department of administration as provided in [section 1].

(3) "Indigent" means that a person has been determined under the provisions of 47-1-111 to be indigent and financially unable to retain private counsel.

~~(4)~~(4) "Office" means the office of state public defender established in ~~47-1-201~~ [section 1].

~~(5)~~(5) "Public defender" means an attorney employed by or under contract with the office and assigned to provide legal counsel to a person under the provisions of this chapter, including attorneys employed by or under contract with the ~~office of appellate defender~~ appellate defender division and the conflict defender division.

~~(6)~~(6) "Statewide public defender system", "state system", or "system" means the system of public defender services established pursuant to this chapter."

Section 21. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense. (1) There is a statewide public defender system, which is required to deliver public defender services in all courts in this state. The system is supervised by the ~~commission and administered by the office~~ director.

(2) The ~~commission~~ director shall approve a strategic plan for service delivery and divide the state into not more than 11 public defender regions. The ~~commission~~ director may establish a regional office to provide public defender services in each region, as provided in 47-1-215, establish a contracted services program to provide services in the region, or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

(3) When a court orders the ~~office or the office of appellate defender to assign counsel~~ assignment of a public defender, the appropriate office shall immediately assign a public defender qualified to provide the required services. The ~~commission~~ director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner.

(4) A court may order ~~an office to assign counsel~~ assignment of a public defender under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

(i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of incarceration, as provided in 46-8-101;

(ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in 40-6-119;

(iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child Welfare Act, as provided in 41-3-425;

(iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

(v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

(vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

(vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in 53-21-116;

(ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as provided in 53-24-302; and

(x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

(b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless of the person's financial ability to retain private counsel, as follows:

(i) as provided for in 41-3-425;

(ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution Act, as provided in 41-5-1607;

(iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles, as provided in 41-6-101;

(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent for Abortion Act of 2013, as provided in 50-20-509;

(v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled person to a residential facility, as provided in 53-20-112;

(vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

(vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

(viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental disorder of the ward, as provided in 72-5-322; and

(c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

(5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

(b) A private attorney who is contracted with under the provisions of 47-1-216 to provide public defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the statewide public defender system and does not result in a conflict of interest."

Section 22. Section 47-1-105, MCA, is amended to read:

"47-1-105. ~~Commission~~ Director -- duties ~~-- report~~ -- report -- rules. (1) The ~~commission~~ director shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the ~~commission~~ director shall:

~~(1)~~(a) establish the qualifications, duties, and compensation of the ~~chief public defender~~ public defender division administrator~~, as~~ provided for in 47-1-201, appoint ~~a~~ the ~~chief public defender~~ public defender division administrator after considering qualified applicants, and regularly evaluate the performance of the ~~chief public defender~~ public defender division administrator; ~~and~~

(b) establish the qualifications, duties, and compensation of the ~~chief appellate defender~~ appellate defender division administrator~~, as~~ provided for in 47-1-205, appoint ~~a~~ the ~~chief appellate defender~~ appellate defender division administrator after considering qualified applicants, and regularly evaluate the performance of the ~~chief appellate defender~~ appellate defender division administrator; and

(c) establish the qualifications, duties, and compensation of the conflict defender division administrator provided for in 47-1-118, appoint the conflict defender division administrator after considering qualified applicants, and regularly evaluate the performance of the conflict defender division administrator.

(2) The director shall establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) The director shall also:

(a) review and approve the strategic plan and budget based on proposals submitted by the ~~chief public defender, the administrative director, and the chief appellate defender;~~ public defender division administrator, the central services division administrator, the appellate defender division administrator, and the conflict defender division administrator;

~~(4)~~(b) review and approve any proposal to create permanent staff positions;

~~(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;~~

~~(6)~~(c) establish policies and procedures for handling excess caseloads;

~~(7)~~(d) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system~~.~~; and

(e) examine workloads and workload standards for all levels within the office of state public defender and include its findings in the biennial report provided for in [section 28].

~~(8)~~(4) The office of state public defender shall adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter~~; and~~

~~(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:~~

~~(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;~~

~~(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;~~

~~(c) the number of deputy public defenders and the region supervised by each;~~

~~(d) the number of public defenders employed or contracted with in the system, identified by region;~~

~~(e) the number of attorney and nonattorney staff supervised by each deputy public defender;~~

~~(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;~~

~~(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;~~

~~(h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;~~

~~(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;~~

~~(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and~~

~~(k) detailed expenditure data by court and case type~~."

Section 23. Section 47-1-110, MCA, is amended to read:

"47-1-110. Public defender account. (1) There is a public defender account in the state special revenue fund to the credit of the office. The office may accept gifts, grants, and donations to carry out the purposes of this chapter. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

(2) Money to be deposited in the account also includes:

(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a

sentence in a criminal case;

(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;

(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and

(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111.

(3) By August 1 of each year, the state treasurer shall transfer the unencumbered balance in the public defender account to the state general fund."

Section 24. Section 47-1-111, MCA, is amended to read:

"47-1-111. Eligibility -- determination of indigence -- rules. (1) (a) When a court orders the office to assign counsel to an applicant for public defender services, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately file a motion to rescind appointment so that the court's order may be rescinded.

(c) (i) The applicant may request that the court conduct a hearing on the motion to rescind appointment. If the applicant requests a hearing on the motion to rescind appointment, the court shall hold the hearing.

(ii) The sole purpose of the hearing is to determine the financial eligibility of the applicant for public defender services. At the beginning of the hearing, the court shall admonish the parties that the scope of the hearing is limited to determining the financial eligibility of the applicant for public defender services.

(iii) Only evidence related to the applicant's financial eligibility for public defender services may be introduced at the hearing.

(iv) The applicant may not be compelled to testify at a hearing on the motion to rescind appointment.

(v) If the applicant testifies at the hearing, the applicant may be questioned only regarding financial eligibility for public defender services.

(vi) If the applicant testifies at the hearing, the court shall advise the applicant that any testimony or

evidence introduced on the applicant's behalf other than testimony or evidence regarding financial eligibility may be used during any criminal action.

(vii) Evidence regarding financial eligibility under this section may not be used in any criminal action, except in a criminal action regarding a subsequent charge of perjury or false swearing related to the applicant's claim of entitlement to public defender services.

(d) If the applicant does not request a hearing on the motion to rescind appointment, does not appear at a hearing on the motion to rescind appointment, or does not testify or present evidence regarding financial eligibility at the hearing on the motion to rescind appointment, the court shall find the applicant is not eligible to have counsel assigned under Title 47 and shall grant the motion to rescind appointment and order the assignment of counsel to be rescinded.

(e) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court grants the motion to rescind appointment and orders the assignment of counsel to be rescinded.

(f) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2) (a) An applicant for public defender services who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the ~~commission~~ central services division provided for in [section 26]. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

(d) The office may not withhold the timely provision of public defender services for delay or failure to fill out an application. However, a court may find a person in civil contempt of court for a person's unreasonable delay or failure to comply with the provisions of this subsection (2).

(3) An applicant is indigent if:

(a) the applicant's gross household income, as defined in 15-30-2337, is at or less than 133% of the poverty level set according to the most current federal poverty guidelines updated periodically in the Federal Register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2); or

(b) the disposable income and assets of the applicant and the members of the applicant's household are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

(4) A determination of indigence may not be denied based solely on an applicant's ability to post bail or solely because the applicant is employed.

(5) A determination may be modified by the office or the court if additional information becomes available or if the applicant's financial circumstances change.

(6) The central services division shall ensure that determinations based on presumptive eligibility, income and assets, and substantial hardships are done in a consistent manner throughout the state. The central services division shall verify information on the application form for all applicants seeking counsel under subsection (3)(b).

~~(6)~~(7) The ~~commission~~ central services division shall establish procedures and adopt rules to implement this section. ~~Commission~~ The procedures and rules:

(a) must ensure that the eligibility determination process is done timely and is fair and consistent statewide;

(b) must allow a qualified private attorney to represent an applicant if the attorney agrees to accept from the applicant a compensation rate that will not constitute a substantial financial hardship to the applicant or the members of the applicant's household;

(c) may provide for the use of other public or private agencies or contractors to conduct eligibility screening under this section;

(d) must avoid unnecessary duplication of processes; and

(e) must prohibit a public defender from performing eligibility screening for the public defender's own cases pursuant to this section. A deputy public defender or individual public defender reviewing another public defender's case may ~~perform~~ oversee eligibility screening pursuant to this section."

Section 25. Section 47-1-118, MCA, is amended to read:

"47-1-118. Conflicts of interest -- conflict defender division administrator. (1) The ~~commission~~ director shall establish a conflicts ~~office to~~ defender division ~~contract for attorneys to represent~~ to provide for the representation of indigent defendants in circumstances ~~where~~ in which, because of conflict of interest, the ~~public defender program~~ public defender division or the appellate defender division is unable to provide representation to a defendant.

(2) ~~The commission shall appoint a conflicts manager to oversee the office~~ The position of conflict defender division administrator is appointed by the director under 47-1-105 and is exempt from the state classification and pay plan as provided in 2-18-103. The ~~conflicts manager~~ conflict defender division administrator reports directly to the ~~commission~~ director and not to the ~~chief public defender~~ public defender division administrator.

(3) The ~~conflicts manager~~ conflict defender division administrator may not handle cases.

~~(3)~~(4) All attorneys ~~contracted for~~ handling conflict of interest cases shall report to the ~~conflicts manager~~ conflict defender division administrator."

Section 26. Central services division -- responsibilities -- department of administration to support. (1) There is a central services division in the office of state public defender. The division must be located in Butte, Montana. The central services division is supervised by an administrator hired by the director.

(2) The central services division shall:

(a) manage eligibility determination under 47-1-111;

(b) manage contracting under 47-1-216;

(c) manage training pursuant to 47-1-210;

(d) provide administrative support to the director; and

(e) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system.

(3) The central services division shall establish for the office of state public defender:

(a) standard procedures to handle complaints about public defender performance and work with the public defender division administrator, appellate defender division administrator, and conflict defender division administrator to ensure that public defenders, office personnel, and clients are aware of avenues available for

bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;

(b) processes and procedures to ensure that employees and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported.

(c) budgeting, reporting, and related administrative requirements for the office of state public defender, including procedures for the approval, payment, recording, reporting, and management of all defense expenses.

(4) The following expenses are payable by the central services division if the expense is incurred at the request of a public defender and is authorized by the director:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and

(b) transcript fees, as provided in 3-5-604.

(5) If the costs to be paid pursuant to subsection (4) are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(6) The department of administration established in 2-15-1001 shall provide central services support to the extent feasible and efficient.

Section 27. Reports. (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the director shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226.

(b) The biennial report must cover the preceding biennium and include:

(i) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(ii) all standards of practice established or being considered by the director for the public defender division, the appellate defender division, and the conflict defender division;

(iii) the number of deputy public defenders and the region supervised by each;

(iv) the number of public defenders employed or contracted with in the system, identified by region, if appropriate, and office;

(v) the number of nonattorney staff employed or contracted with in the system, identified by region, if

appropriate, and office;

(vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(vii) the total number of persons represented by the public defender division, the appellate defender division, and the conflict defender division identified by region, if appropriate, court, and case type;

(viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;

(ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(xi) detailed expenditure data by court and case type.

(2) The office shall report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the governor and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. The report must be provided in an electronic format.

Section 28. Section 47-1-201, MCA, is amended to read:

"47-1-201. ~~Office of state public defender~~ Public defender division -- personnel -- compensation -- expenses ~~-- reports~~. (1) There is ~~an office of state public defender~~ a public defender division. ~~The office must be located in Butte, Montana.~~ The head of the ~~office is the chief public defender~~ division is the public defender division administrator, who is supervised by the ~~commission~~ director.

(2) The ~~chief public defender~~ public defender division administrator must be an attorney licensed to practice law in the state. The ~~chief public defender~~ public defender division administrator is appointed by and serves at the pleasure of the ~~commission~~ director. The position of ~~chief public defender~~ public defender division administrator is exempt from the state classification and pay plan as provided in 2-18-103. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities,

taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The ~~chief public defender~~ public defender division administrator shall hire or contract for and supervise other personnel necessary to perform the function of the ~~office of state public defender~~ public defender division ~~and to implement the provisions of this chapter~~, including but not limited to:

(a) ~~the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:~~

~~(i) an administrative director, who must be experienced in business management and contract management;~~

~~(ii) a chief contract manager to oversee and enforce the contracting program;~~

~~(iii) a training coordinator, appointed as provided in 47-1-210;~~

~~(iv)~~ deputy public defenders, as provided in 47-1-215, who are exempt from the state classification and pay plan as provided in 2-18-103;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the ~~office~~ public defender division.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

~~(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:~~

~~(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and~~

~~(b) transcript fees, as provided in 3-5-604.~~

~~(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.~~

~~(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.~~

~~(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.~~

~~(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.~~

~~(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.~~

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.~~"

Section 29. Section 47-1-202, MCA, is amended to read:

"47-1-202. ~~Chief public defender~~ Public defender division administrator -- duties. (1) In addition to the duties provided in 47-1-201~~,~~ and subject to approval by the director, the ~~chief public defender~~ public defender division administrator shall:

(a) ~~act as secretary to the commission and provide administrative staff support to the commission until the commission can hire its staff as provided in 2-15-1028(6)(b);~~

~~(b) assist the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to this chapter;~~

~~(c)~~ develop and ~~present for the commission's approval~~ implement a regional strategic plan for the delivery of public defender services;

~~(d) establish processes and procedures to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;~~

~~(e)~~(b) ~~establish~~ ensure that administrative management procedures for regional offices are consistent with the policies and procedures provided by the central services division established in [section 26];

~~(f)~~(c) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking

into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;

~~(g)~~(d) establish policies and procedures for assigning counsel in capital cases that are consistent with standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

~~(h)~~(e) work with the training coordinator provided for in 47-1-210 to establish and supervise a training and performance evaluation program for attorneys and nonattorney staff members and contractors;

~~(i)~~(f) work with the central services division to establish procedures to handle complaints about public defender performance ~~and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the disciplinary jurisdiction of the supreme court and the rules promulgated pursuant to Article VII, section 2, of the Montana constitution and the applicable provisions of Title 37, chapter 61;~~

~~(j) actively seek gifts, grants, and donations that may be available through the federal government or other sources to help fund the system~~; and

~~(k)~~(g) perform all other duties assigned by the ~~commission~~ director pursuant to this chapter.

(2) The ~~chief public defender~~ public defender division administrator may not maintain a client caseload."

Section 30. Section 47-1-205, MCA, is amended to read:

"47-1-205. ~~Office of appellate defender -- chief appellate defender~~ Appellate defender division -- division administrator. (1) There is an ~~office of appellate defender~~ appellate defender division. The ~~office of appellate defender~~ appellate defender division must be located in Helena, Montana.

(2) (a) The ~~commission~~ director shall hire and supervise ~~a~~ the ~~chief appellate defender~~ appellate defender division administrator to manage and supervise the ~~office of appellate defender~~ appellate defender division. The ~~chief appellate defender~~ appellate defender division administrator is appointed by and serves at the pleasure of the ~~commission~~ director. The ~~commission~~ director shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(b) The ~~chief appellate defender~~ appellate defender division administrator must be an attorney licensed to practice law in the state.

(c) The position of ~~chief appellate defender~~ appellate defender division administrator is exempt from the

state classification and pay plan as provided in 2-18-103.

(3) ~~The~~ Subject to approval by the director, the ~~chief appellate defender~~ appellate defender division administrator shall:

(a) direct, manage, and supervise all public defender services provided by the ~~office of appellate defender~~ appellate defender division~~, including budgeting, reporting, and related functions~~;

(b) ensure that when a court orders the ~~office of appellate defender~~ appellate defender division to assign an appellate lawyer or when a defendant or petitioner is otherwise entitled to an appellate public defender, the assignment is made promptly to a qualified and appropriate appellate defender who is immediately available to the defendant or petitioner when necessary;

(c) ensure that appellate defender assignments comply with the provisions of 47-1-202~~(1)(f)~~(1)(c) and standards for counsel for indigent persons in capital cases issued by the Montana supreme court;

(d) hire and supervise the work of ~~office of appellate defender~~ appellate defender division personnel ~~as authorized by the appellate defender~~;

(e) contract for services as provided in 47-1-216 and as authorized by the ~~commission~~ director according to the strategic plan for the delivery of public defender services;

(f) keep a record of appellate defender services and expenses of the ~~office of appellate defender~~ appellate defender division and submit records and reports to the ~~commission as requested through the office of state public defender~~ central services division provided for in [section 26];

(g) implement standards and procedures established by the ~~commission~~ director for the ~~office of appellate defender~~ appellate defender division;

(h) maintain a minimum client caseload as determined by the ~~commission~~ director;

(i) confer with the ~~chief public defender~~ director on budgetary issues and submit budgetary requests and information for the reports required by law or by the governor ~~through the chief public defender~~; and

(j) perform all other duties assigned to the ~~chief appellate defender~~ appellate defender division administrator by the ~~commission~~ director."

Section 31. Section 47-1-210, MCA, is amended to read:

"47-1-210. Training program -- coordinator. (1) There is within the ~~office~~ central services division provided for in [section 26] a position of training coordinator for public defenders.

(2) The ~~chief public defender~~ central services division administrator shall ~~appoint~~ hire the training coordinator.

(3) The training coordinator shall:

(a) coordinate training to public defenders in current aspects of criminal and civil law involving public defense;

(b) assist in the development and dissemination of standards, procedures, and policies that will ensure that public defender services are provided consistently throughout the state;

(c) consolidate information on important aspects of public defense and provide for a collection of official opinions, legal briefs, and other relevant information;

(d) provide assistance with research or briefs and provide other technical assistance requested by a public defender; and

(e) ~~apply for and assist in the disbursement of federal funds or other grant money to aid the statewide public defender system; and~~

~~(f)~~ perform other duties assigned by the ~~chief public defender~~ director."

Section 32. Section 47-1-215, MCA, is amended to read:

"47-1-215. Regional offices -- deputy public defenders -- office space. (1) The ~~chief public defender~~ public defender division administrator shall hire, assign, and supervise a deputy public defender to manage and supervise each regional office established pursuant to 47-1-104(2).

(2) ~~Each~~ Subject to approval by the public defender division administrator, each deputy public defender shall:

(a) manage and supervise all public defender services provided within the deputy public defender's assigned region;

(b) establish protocols so that when a court orders ~~the office to assign~~ the assignment of counsel, the assignment is made promptly to an appropriate public defender and so that a public defender is immediately available when necessary;

(c) ensure that public defender assignments within the region comply with the provisions of 47-1-202~~(1)(f)~~(1)(c);

(d) hire and supervise the work of regional office personnel as authorized by the ~~chief public defender~~

public defender division administrator;

(e) coordinate with the contract manager provided for in 47-1-216 to contract for services as ~~provided in 47-1-216 and~~ authorized by the ~~chief public defender~~ public defender division administrator according to the strategic plan approved by the ~~commission~~ director;

(f) keep a record of public defender and associated services and expenses in the region and submit the records to the ~~chief public defender~~ public defender division administrator as requested;

(g) implement the standards and procedures established by the ~~commission~~ director and ~~chief public defender~~ the public defender division administrator for the region;

(h) maintain a minimum client caseload as determined by the ~~chief public defender~~ public defender division administrator; and

(i) perform all other duties as assigned by the ~~chief public defender~~ public defender division administrator.

(3) Expenses for office space required for regional offices, including rent, utilities, and maintenance, must be paid by the office of state public defender and may not be considered a county or city obligation."

Section 33. Section 47-1-216, MCA, is amended to read:

"47-1-216. Contracted services ~~-- rules~~. (1) The ~~commission~~ director shall establish standards for a statewide contracted services program ~~that ensures~~ to be managed by the central services division provided for in [section 26]. The director shall ensure that contracting for public defender services is done fairly and consistently statewide and within each public defender region ~~and that contracting for appellate defender services is done fairly and consistently statewide~~.

(2) There is a contract manager position in the central services division ~~The chief contract manager shall oversee the contracting program and may not maintain a client caseload~~ hired by the central services division administrator. The contract manager is responsible for the administrative oversight of contracting for attorney and nonattorney support for units of the office of state public defender.

(3) ~~The office of state public defender and each regional office, in a manner consistent with statewide standards adopted by the commission pursuant to this section, may contract to provide public defender, professional nonattorney, and other personal services necessary to deliver public defender services within each public defender region. The chief appellate defender, in a manner consistent with statewide standards adopted~~

~~by the commission pursuant to this section, may contract to provide appellate defender, professional nonattorney, and other personal services necessary to deliver appellate defender services in the state.~~ All contracting pursuant to this section is exempt from the Montana Procurement Act as provided in 18-4-132.

(4) ~~(a) Except as provided in subsection (4)(b), contracts~~ Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.

~~(b) Contracts for legal representation of individuals appearing before the following specialty courts may be awarded based on a fixed fee:~~

~~(i) a drug treatment court, as defined in 46-1-1103, including an adult, a juvenile, and a family drug court;~~

~~(ii) a mental health treatment court, as defined in 46-1-1203;~~

~~(iii) a DUI court, as defined in 61-5-231;~~

~~(iv) a court that serves participants with co-occurring disorders, including a mental health treatment court that is combined with a drug treatment court; or~~

~~(v) a veterans treatment court.~~

~~(c) A contract for legal representation pursuant to subsection (4)(b) may not be awarded without the approval of the commission and without verifiable assurances that effective representation will be provided.~~

(5) Contracting for ~~public defender and appellate defender services~~ attorney services must be done through a competitive process that must, at a minimum, involve the following considerations:

(a) attorney qualifications necessary to provide effective assistance of counsel ~~that meets the standards established by the commission~~;

(b) attorney qualifications necessary to provide effective assistance of counsel that meets the standards issued by the Montana supreme court for counsel for indigent persons in capital cases;

(c) attorney access to support services, such as paralegal and investigator services;

(d) attorney caseload, including the amount of private practice engaged in outside the contract;

(e) reporting protocols and caseload monitoring processes;

(f) a process for the supervision and evaluation of performance;

(g) a process for conflict resolution; ~~and~~

(h) continuing education requirements ~~in accordance with standards set by the commission~~; and

(i) cost of the services.

(6) The ~~chief public defender, deputy public defenders, and the chief appellate defender~~ public defender division administrator, deputy public defenders, appellate defender division administrator, and conflict defender division administrator shall ~~provide for contract oversight and enforcement to ensure compliance with established standards~~ supervise the personnel contracted for their respective offices and ensure compliance with the standards established in the contract.

(7) The ~~commission~~ director shall ~~adopt rules to~~ establish reasonable compensation for attorneys contracted to provide public defender and appellate defender services and for others contracted to provide nonattorney services.

(8) Contract attorneys may not take any money or benefit from an appointed client or from anyone for the benefit of the appointed client.

(9) The ~~commission~~ director shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.

(10) The ~~commission~~ director shall ~~implement rules requiring~~ ensure that there are procedures for conducting an evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria."

Section 34. Section 50-20-509, MCA, is amended to read:

"50-20-509. Procedure for judicial waiver of consent. (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.

(2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel upon request.

(3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters

to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.

(4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.

(5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:

(a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or

(b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition."

Section 35. Section 53-9-104, MCA, is amended to read:

"53-9-104. (Temporary) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime

for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program. (Terminates June 30, 2021--sec.

27, Ch. 285, L. 2015; sec. 1, Ch. 292, L. 2015.)

53-9-104. (Effective July 1, 2021) Powers and duties of office. (1) The office shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual convicted of a qualifying crime for any book, photograph, movie, television production, or play prepared for a commercial purpose that is based directly upon the crime or for the sale of an item owned or obtained by an individual convicted of a qualifying crime or obtained, produced, or gained directly through unique knowledge about the crime or preparation for the crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, to be held for a period of time that the office may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to reimburse the office of state public defender, provided for in ~~47-1-201~~ [section 1], for costs associated with providing assigned counsel for the charged person. Each victim and dependent of a deceased victim is entitled to actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the state for any public defender or any attorney assigned for the charged person must be deposited in the state general fund.

(2) The office may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the office to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant if the office has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (2)(b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims assistance coordinating and planning program."

Section 36. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel. (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent has the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."

Section 37. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

(a) a facility;

(b) a person licensed in this state to practice medicine; or

(c) a mental health professional licensed in this state.

(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).

(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel for the minor."

Section 38. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to immediately assign counsel to represent the person at either the hearing or the trial, or both."

Section 39. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to immediately assign counsel

for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in ~~47-1-201~~ [section 1], to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel,

pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 40. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics -- rights. (1) A person may be committed to the custody of the department by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition must allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the person has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the approved public treatment facility to which the person has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate must be delivered to each person notified.

(3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person has a right to have a licensed physician of the person's own choosing conduct an examination and testify on the person's behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and testimony must be paid by the county. The person must be present unless the court believes that the person's presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable,

shall examine the person in chambers. If the person refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the person to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. The court may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for the person and that the treatment is likely to be beneficial.

(5) A person committed under this section must remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because the person is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided

in subsection (3).

(8) A person committed to the custody of the department for treatment must be discharged at any time before the end of the period for which the person has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of the person's right to contest the application, be represented by counsel at every stage of any proceedings relating to the person's commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court believes that the person needs the assistance of counsel, the court shall order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel for the person regardless of the person's wishes. The person whose commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of the person's choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or the patient's parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which the person to be committed resides or is present."

Section 41. Section 72-5-225, MCA, is amended to read:

"72-5-225. Procedure for court appointment of guardian of minor -- notice -- hearing -- representation by attorney. (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;

(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 42. Section 72-5-234, MCA, is amended to read:

"72-5-234. Procedure for resignation or removal -- petition, notice, and hearing -- representation by attorney. (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor."

Section 43. Section 72-5-315, MCA, is amended to read:

"72-5-315. Procedure for court appointment of guardian -- hearing -- examination -- interview --

procedural rights. (1) The incapacitated person or any person interested in the incapacitated person's welfare, including the county attorney, may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. The allegedly incapacitated person may have counsel of the person's own choice or the court may, in the interest of justice, appoint an appropriate official or order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the person in the proceeding.

(3) The person alleged to be incapacitated must be examined by a physician appointed by the court who shall submit a report in writing to the court and must be interviewed by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular experience or expertise in treating, evaluating, or caring for persons with the kind of disabling condition that is alleged to be the cause of the incapacity. The visitor shall also interview the person who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made and submit the visitor's report in writing to the court. Whenever possible without undue delay or expense beyond the ability to pay of the alleged incapacitated person, the court, in formulating the judgment, shall utilize the services of any public or charitable agency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in the person's affairs.

(4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence bearing upon the person's condition. The person is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel requests it."

Section 44. Section 72-5-408, MCA, is amended to read:

"72-5-408. Procedure concerning hearing and order on original petition. (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court determines that the

interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in ~~47-1-201~~ [section 1], to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of the person's own choice, the court shall order the office of state public defender~~, provided for in 47-1-201,~~ to assign counsel to represent the person pursuant to the Montana Public Defender Act, Title 47, chapter 1. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or professional person as defined in 53-21-102 designated by the court. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court. It is preferable that a physician designated by the court not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) In the case of an appointment pursuant to 72-5-410(1)(h), the court shall direct that the person to be protected be examined by a physician as set forth in subsection (2).

(4) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order."

Section 45. Repealer. The following section of the Montana Code Annotated is repealed:

2-15-1028. Public defender commission.

Section 46. Transition -- appointment of director of office of state public defender. (1) The director of the department of administration shall hire the director of the office of state public defender by July 1, 2017. Within 30 days of [the effective date of this section], the public defender advisory commission shall submit a list of nominees for the position of director of the office of state public defender to the director of the department of administration. The director of the department of administration shall consider the nominees on the list but may hire a director whose name was not included on the list.

(2) By September 1, 2018, the office of state public defender shall report to the law and justice interim

committee on the status of the termination of the public defender advisory commission.

Section 47. Codification instruction -- instructions to code commissioner. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 1].

(2) [Sections 26 and 27] are intended to be codified as an integral part of Title 47, chapter 1, part 1, and the provisions of Title 47, chapter 1, part 1, apply to [sections 26 and 27].

(3) The code commissioner is instructed to:

(a) renumber 2-15-1028 and codify it in the same part as [section 1];

(b) renumber 47-1-210 and 47-1-216 and codify them in Title 47, chapter 1, part 1;

(c) renumber 47-1-205 and codify it in a new part 3 in Title 47, chapter 1;

(d) renumber 47-1-118 and codify it in a new part 4 in Title 47, chapter 1; and

(e) change all internal references within and to the renumbered sections in the Montana Code Annotated, including within sections enacted or amended by the 2017 legislature, to reflect the new section numbers assigned pursuant to this section.

Section 48. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 49. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2017.

(2) [Sections 1 and 46] and this section are effective on passage and approval.

- END -

I hereby certify that the within bill,

HB 0077, originated in the House.

Speaker of the House

Signed this _____ day

of _____, 2017.

Chief Clerk of the House

President of the Senate

Signed this _____ day

of _____, 2017.

HOUSE BILL NO. 77

INTRODUCED BY R. BRODEHL

BY REQUEST OF THE TASK FORCE ON STATE PUBLIC DEFENDER OPERATIONS

AN ACT GENERALLY REVISING THE STATE PUBLIC DEFENDER SYSTEM; PROVIDING FOR A DIRECTOR HIRED BY THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION TO BE THE HEAD OF THE OFFICE OF STATE PUBLIC DEFENDER; MAKING THE PUBLIC DEFENDER COMMISSION ADVISORY AND TEMPORARY; RENAMING CERTAIN POSITIONS; REVISING OR CLARIFYING CERTAIN FUNCTIONS AND SUPERVISORY DUTIES; REVISING EXEMPTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; ESTABLISHING A CENTRAL SERVICES DIVISION UNDER AN ADMINISTRATOR HIRED BY THE DIRECTOR; CONSOLIDATING ADMINISTRATIVE FUNCTIONS INTO THE CENTRAL SERVICES DIVISION; REQUIRING THAT THE DEPARTMENT OF ADMINISTRATION CONTINUE TO PROVIDE ADMINISTRATIVE SUPPORT; PROVIDING RULEMAKING AUTHORITY; REVISING THE ORDER OF STATUTES IN THE MONTANA PUBLIC DEFENDER ACT; AMENDING SECTIONS 2-15-1028, 2-18-103, 3-5-511, 3-5-604, 3-5-901, 5-5-228, 17-7-154, 26-2-506, 41-5-111, 41-5-1413, 42-2-405, 46-4-304, 46-8-101, 46-8-104, 46-15-115, 46-17-203, 46-21-111, 46-21-201, 47-1-103, 47-1-104, 47-1-105, 47-1-110, 47-1-111, 47-1-118, 47-1-201, 47-1-202, 47-1-205, 47-1-210, 47-1-215, 47-1-216, 50-20-509, 53-9-104, 53-20-112, 53-21-112, 53-21-116, 53-21-122, 53-24-302, 72-5-225, 72-5-234, 72-5-315, AND 72-5-408, MCA; REPEALING SECTION 2-15-1028, MCA; AND PROVIDING EFFECTIVE DATES.

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2019 Biennium

Bill #	HB0077	**Title:**	Reorganize Public Defender System
Primary Sponsor:	Brodehl, Randy	**Status:**	As Amended in the Senate

☐Significant Local Gov Impact ✓Needs to be included in HB 2 ☐Technical Concerns

☐Included in the Executive Budget ☐Significant Long-Term Impacts ☐Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2018 Difference	FY 2019 Difference	FY 2020 Difference	FY 2021 Difference
Expenditures:				
General Fund	$265,494	$249,669	$253,414	$257,215
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance:	($265,494)	($249,669)	($253,414)	($257,215)

Description of fiscal impact: HB 77 reorganizes the Office of the State Public Defender and eliminates the Public Defender Commission. The bill also creates an agency Director hired by the Director of the Department of Administration and requires the Central Services Division to provide oversight of the eligibility function. The fiscal impact is generated by the addition of the Director, Eligibility Technicians, and associated expenses.

FISCAL ANALYSIS

Assumptions:

1. HB 77 sunsets the Public Defender Commission on July 1, 2017. The annual savings would be approximately $10,000 per year.
2. This bill creates a new Director position and requires the Director to be appointed no later than July 1, 2017 with estimated salary and benefits of $140,972.
3. Centralized Services Division oversight of eligibility determination would require 1.50 FTE Eligibility Technicians with salary and benefits costs of $92,702.
4. One-time equipment/set up costs including software licenses for the 2.50 FTE total $15,825 in FY 2018. Ongoing annual operating costs for the 2.50 FTE total $25,995.
5. A 1.5% inflation factor is applied in FY 2020 and FY 2021.

	FY 2018 Difference	FY 2019 Difference	FY 2020 Difference	FY 2021 Difference
Fiscal Impact:				
FTE	2.50	2.50	2.50	2.50
Expenditures:				
Personal Services	$233,674	$233,674	$237,179	$240,737
Operating Expenses	$15,995	$15,995	$16,235	$16,478
Equipment	$15,825	$0	$0	$0
TOTAL Expenditures	$265,494	$249,669	$253,414	$257,215
Funding of Expenditures:				
General Fund (01)	$265,494	$249,669	$253,414	$257,215
TOTAL Funding of Exp.	$265,494	$249,669	$253,414	$257,215
Revenues:				
General Fund (01)	$0	$0	$0	$0
TOTAL Revenues	$0	$0	$0	$0
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($265,494)	($249,669)	($253,414)	($257,215)

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on January 16, 2017 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Seth Berglee, Vice Chair (R)
Rep. Virginia Court, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Bob Brown (R)
Rep. Jennifer Eck (D)
Rep. Bill Harris (R)
Rep. Kathy Kelker (D)
Rep. Casey Knudsen (R)
Rep. Theresa Manzella (R)
Rep. Nate McConnell (D)
Rep. Shane A. Morigeau (D)
Rep. Dale Mortensen (R)
Rep. Zac Perry (D)
Rep. Matt Regier (R)
Rep. Lola Sheldon-Galloway (R)
Rep. Barry Usher (R)
Rep. Kirk Wagoner (R)

Members Excused:

Rep. Ellie Hill Smith (D)

Members Absent: None

Staff Present: Sara Fleming, Committee Secretary
Helen Thigpen, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 62, 1/3/2017; HB 70, 1/3/2017; HB 77, 1/3/2017

HEARING ON HB 62

Opening Statement by Sponsor:

00:00:08 Rep. Randy Brodehl (R), HD 9, opened the hearing on HB 62, Dept. of Revenue to collect fees for public defender services.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:

00:03:24 Bill Hooks, Office of the Public Defender (OPD)
00:03:46 Steve Austin, Department of Revenue (DOR)

Questions from Committee Members and Responses:

00:05:42 Vice Chair Court
00:06:09 Bill Hooks, OPD
00:06:39 Vice Chair Court
00:06:55 Bill Hooks, OPD
00:07:12 Rep. Eck
00:07:42 Bill Hooks, OPD
00:10:12 Rep. Eck
00:11:02 Steve Austin, DOR
00:11:58 Rep. Sheldon-Galloway
00:12:33 Bill Hooks, OPD
00:13:09 Steve Austin, DOR
00:13:38 Rep. Sheldon-Galloway
00:13:49 Steve Austin, DOR
00:14:18 Rep. Wagoner
00:15:31 Steve Austin, DOR
00:16:41 Rep. Wagoner
00:16:50 Bill Hooks, OPD
00:17:05 Vice Chair Court
00:17:41 Steve Austin, DOR
00:18:05 Rep. Usher
00:18:39 Steve Austin, DOR
00:19:15 Rep. Usher
00:19:25 Steve Austin, DOR
00:20:06 Rep. Usher
00:20:27 Steve Austin, DOR

Closing by Sponsor:

00:20:59 Rep. Brodehl

00:23:53 Recess
00:26:01 Reconvene

HEARING ON HB 77

Opening Statement by Sponsor:
00:26:05 Rep. Randy Brodehl (R), HD 9, opened the hearing on HB 77, Revise public defender system and provide for a director hired by governor.
EXHIBIT(juh11a01)

Proponents' Testimony:
00:33:27 Rep. Dudik
EXHIBIT(juh11a02)

00:35:51 Tim Twardoski, American Federation of State, County and Municipal Employees (AFSCME)
00:36:17 Mark Murphy, Montana County Attorneys Association (MCAA)
EXHIBIT(juh11a03)

00:40:23 Chris Abbott, Self
00:42:39 Amy Sassano, Office of Budget and Program Planning (OBPP)
00:43:12 SK Rossi, American Civil Liberties Union (ACLU)

Opponents' Testimony: None

Informational Testimony:
00:44:23 Bill Hooks, Office of the Public Defender (OPD)

Questions from Committee Members and Responses:
00:44:45 Rep. Kelker
00:45:31 Mark Murphy, MCAA
00:47:23 Vice Chair Court
00:47:49 Rep. Dudik
00:48:58 Vice Chair Court
00:49:45 Rep. Brodehl
00:50:15 Rep. Eck
00:50:53 Rep. Dudik
00:51:49 Rep. Kelker
00:52:30 Rep. Dudik
00:53:38 Rep. Kelker
00:53:49 Rep. Dudik

Closing by Sponsor:
00:54:23 Rep. Brodehl

00:56:31 Recess
01:04:06 Reconvene

HEARING ON HB 70

Opening Statement by Sponsor:
01:04:18 Rep. Jessica Karjala (D), HD 48, opened the hearing on HB 70, Strengthening guardianship services and creating a WINGS group.

Proponents' Testimony:
01:11:51 Denise Armstrong, Big Sky Senior Services
EXHIBIT(juh11a04)

01:19:22 Susan Bailey, Adult Resource Alliance
EXHIBIT(juh11a05)

01:23:49 Larry Riley, Missoula Aging Services
01:27:56 Beth Brenneman, Disability Rights Montana
EXHIBIT(juh11a06)

01:32:16 Lynn Mullowney Cabrera, Alzheimer's Association
EXHIBIT(juh11a07)

01:36:46 Cindy Nickol, Self
01:45:25 Claudia Clifford, American Association of Retired Persons (AARP)
EXHIBIT(juh11a08)

Opponents' Testimony: None

Informational Testimony:
01:48:49 Beth McLaughlin, Supreme Court

Questions from Committee Members and Responses:
01:49:21 Rep. Kelker
01:49:54 Cindy Nickol, Self
01:50:14 Rep. Kelker
01:50:21 Cindy Nickol, Self
01:50:43 Rep. Kelker
01:51:10 Larry Riley, Missoula Aging Services
01:52:02 Rep. Kelker
01:52:13 Larry Riley, Missoula Aging Services
01:53:58 Rep. Harris
01:54:55 Larry Riley, Missoula Aging Services
01:57:44 Rep. Harris
01:57:56 Larry Riley, Missoula Aging Services
01:59:00 Rep. Brown
01:59:39 Rep. Karjala
02:00:21 Rep. Brown
02:00:31 Rep. Karjala
02:00:51 Rep. Brown
02:00:59 Denise Armstrong, Big Sky Senior Services
02:01:33 Rep. Bishop
02:02:22 Denise Armstrong, Big Sky Senior Services

02:03:32 Rep. Usher
02:04:11 Rep. Karjala
02:04:31 Rep. Sheldon-Galloway
02:05:07 Chair Doane
02:05:17 Rep. Sheldon-Galloway
02:05:25 Denise Armstrong, Big Sky Senior Services
02:06:04 Vice Chair Court
02:06:35 Rep. Karjala
02:07:01 Vice Chair Court
02:07:17 Rep. Karjala

Closing by Sponsor:
02:07:55 Rep. Karjala

ADJOURNMENT

Adjournment: 02:11:32

Sara Fleming, Secretary

sf

Additional Documents:

EXHIBIT(juh11aad.pdf)

Draft

EXHIBIT 1
DATE 1/16/17
HB 77

Amendments to House Bill No. 77
1st Reading Copy

Requested by Representative Randy Brodehl

For the House Judiciary Committee

Prepared by Helen Thigpen
January 16, 2017 (8:26am)

1. Title, page 1, line 6.
Strike: "GOVERNOR"
Insert: "DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION"

2. Title, page 1, line 14.
Strike: "2-15-104, 2-15-111,"

3. Title, page 1, line 16.
Following: "46-17-203"
Insert: "46-21-111"

4. Title, page 1, line 18.
Following: "72-5-408, MCA;"
Strike: "AND"
Insert: "REPEALING SECTION 2-15-1028;"

5. Title, page 1, line 19.
Following: "VOIDNESS"
Insert: "; AND PROVIDING EFFECTIVE DATES"

6. Page 1, line 23 through page 3, line 8.
Strike: section 1 through section 2 in their entirety
Renumber: subsequent sections

7. Page 3, line 11 through line 12.
Strike: "governor" on line 11 through "subsection (2)" on line 12
Insert: "director of the department of administration"

8. Page 3, line 13.
Strike: "governor"
Insert: "director of the department of administration"

9. Page 3, line 14.
Strike: "governor"
Insert: "director of the department of administration"

10. Page 3, line 15 through line 17.
Strike: "If the governor" on line 15 through "list." on line 17
Insert: "The director of the department of administration shall consider the nominees on the list submitted by the public

defender advisory commission, but may hire a director whose name was not included on the list.

(3) The public defender advisory commission shall submit the list of nominees within 30 days of passage and approval of [this act]."

11. Page 3, line 21.
Strike: "[section 3]"
Insert: "[section 1]"

12. Page 5, line 4.
Strike: "[section 3]"
Insert: "[section 1]"

13. Page 6, line 12.
Strike: "[section 3]"
Insert: "[section 1]"

14. Page 6, line 13.
Strike: "chief public defender"
Insert: "public defender division administrator"

15. Page 6, line 17.
Strike: "chief appellate defender"
Insert: "appellate defender division administrator"

16. Page 6, line 19.
Strike: "chief conflict defender"
Insert: "conflict defender division administrator"

17. Page 7, line 4.
Strike: "[section 27]"
Insert: "[section 26]"

18. Page 8, line 12.
Strike: "[section 27]"
Insert: "[section 26]"

19. Page 9, line 12.
Strike: "[section 27]"
Insert: "[section 26]"

20. Page 9, line 15.
Strike: "[section 27]"
Insert: "[section 26]"

21. Page 9, line 20.
Strike: "[section 27]"
Insert: "[section 26]"

22. Page 10, line 1.
Strike: "[section 27]"
Insert: "[section 26]"

23. Page 10, line 6.
Strike: "[section 27]"
Insert: "[section 26]"

24. Page 11, line 26.
Strike: "office of chief appellate defender"
Insert: "appellate defender division"

25. Page 12, line 4.
Strike: "[section 27]"
Insert: "[section 26]"

26. Page 12, line 13.
Strike: "[section 3]"
Insert: "[section 1]"

27. Page 12, line 27.
Strike: "[section 3]"
Insert: "[section 1]"

28. Page 13, line 11.
Strike: "[section 3]"
Insert: "[section 1]"

29. Page 13, line 17.
Strike: "[section 3]"
Insert: "[section 1]"

30. Page 13, line 30.
Strike: "[section 3]"
Insert: "[section 1]"

31. Page 14, line 12.
Strike: "[section 3]"
Insert: "[section 1]"

32. Page 15, line 8.
Strike: "[section 27]"
Insert: "[section 26]"

33. Page 15, line 25.
Strike: "[section 3]"
Insert: "[section 1]"

34. Page 16.
Following: line 3
Insert: "Section 18. Section 46-21-111, MCA, is amended to read:

"46-21-111. Preservation and disposal of biological evidence obtained in criminal proceeding. (1) (a) A law enforcement agency shall preserve biological evidence that the agency has reason to believe contains DNA material and that is obtained in connection with a felony for which a conviction is obtained. The agency shall preserve the evidence for a minimum of 3 years after the conviction in the case becomes final or for any period beyond 3 years that is required by a court order issued within 3 years after the conviction in the case becomes final.

(b) An agency may propose to dispose of biological evidence before the expiration of the time period described in subsection (1)(a) if the agency notifies the convicted person, the attorney of record for the convicted person, and the Montana ~~chief~~ public defender division administrator. The notification must include a description of the biological evidence, a statement that the agency will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service of the notification in the court that entered the judgment, and the name and mailing address of the court where an objection may be filed. If an objection to the disposition of the evidence is not filed within the 120-day period, the agency may dispose of the evidence. If a written objection is filed, the court shall consider the reasons for and against disposition of the evidence, may hold a hearing on the proposed disposition of the evidence, and shall issue an order ruling on the matter as required by the interests of justice and the integrity of the criminal justice system.

(c) If a party objects to the disposition of the biological evidence, the agency has the burden of proving by a preponderance of the evidence that the evidence should be disposed of.

(2) Upon completion of laboratory analysis, the laboratory operated by the forensic sciences division of the department of justice shall permanently preserve under laboratory control any remaining biological evidence collected from items submitted to it.

(3) For purposes of this section, the following definitions apply:

(a) "Biological evidence" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material, including the contents of a sexual assault examination kit, that is collected as part of a criminal investigation or that may reasonably be used to incriminate or exculpate any person of an offense.

(b) "DNA" means deoxyribonucleic acid."

{Internal References to 46-21-111: None.}"
Renumber: subsequent sections

35. Page 16, line 22.
Strike: "[section 3]"
Insert: "[section 1]"

36. Page 18, line 3.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

37. Page 18, line 6 through line 7.
Strike: subsection (3) in its entirety
Insert: "(2) "Executive director" or "director" means the executive director of the office of state public defender appointed by the director of the department of administration as provided in [section 1]."

38. Page 18, line 10.
Strike: "[section 3]"
Insert: "[section 1]"

39. Page 20, line 19.
Strike: "in consultation with the commission"

40. Page 20, line 21.
Strike: "chief public defender"
Insert: "public defender division administrator"

41. Page 20, line 22.
Strike: "chief public defender"
Insert: "public defender division administrator"

42. Page 20, line 24.
Strike: "chief appellate defender"
Insert: "appellate defender division administrator"

43. Page 20, line 25.
Strike: "chief appellate defender"
Insert: "appellate defender division administrator"

44. Page 20, line 27.
Strike: "chief conflict defender"
Insert: "conflict defender division administrator"

45. Page 20, line 28.
Strike: "chief conflict defender"
Insert: "conflict defender division administrator"

46. Page 21, line 15 through line 17.
Following: "submitted by the" on line 15

Strike: remainder of line 15 through line 17
Insert: "public defender division administrator, the central services division administrator established in [section 26], the appellate defender division administrator, and the conflict defender division administrator."

47. Page 24, line 12.
Strike: "office"
Insert: "division"
Strike: "[section 27]"
Insert: "[section 26]"

48. Page 25, line 2.
Following: line 2
Insert: "(6) The central services division shall review all applications for court-appointed counsel in order to determine whether applicants are eligible. The central services division shall ensure that determinations based on presumptive eligibility, income and assets, and substantial hardships are done in a consistent manner throughout the state. The central services division must verify information on the application form for all applicants seeking counsel under subsection (3)(b)."
Renumber: subsequent subsections

49. Page 25, line 3.
Strike: "office"
Insert: "central services division"

50. Page 25, line 5.
Following: "process is"
Insert: "done timely and is"

51. Page 25, line 17.
Strike: "**chief conflict defender**"
Insert: "**conflict defender division administrator**"

52. Page 25, line 18.
Strike: "office"
Insert: "division"

53. Page 25, line 19 through line 20.
Strike: "office of chief public" on line 19 through "appellate defender" on line 20
Insert: "public defender division or the appellate defender division"

54. Page 25, line 21 through line 22.
Strike: "chief conflict" on line 21 through "defender" on line 22

Insert: "conflict defender division administrator"

55. Page 25, line 23.
Strike: "chief conflict defender"
Insert: "conflict defender division administrator"

56. Page 25, line 24.
Strike: "chief public defender"
Insert: "public defender division administrator"

57. Page 25, line 25.
Strike: "chief conflict defender"
Insert: "conflict defender division administrator"

58. Page 25, line 27.
Strike: "chief conflict defender"
Insert: "conflict defender division administrator"

59. Page 25, line 29.
Strike: "**office**"
Insert: "**division**"

60. Page 25, line 30.
Following: "central services"
Strike: "office"
Insert: "division"
Following: "state public defender."
Strike: "The office"
Insert: "The division"

61. Page 26, line 1.
Strike: "office"
Insert: "division"

62. Page 26, line 3.
Strike: "office"
Insert: "division"

63. Page 26, line 6.
Following: "47-1-210;"
Strike: "and"
Following: line 6
Insert: "(d) provide administrative support to the director; and"
Renumber: subsequent subsections

64. Page 26, line 9.
Following: "central services"
Strike: "office"
Insert: "division"

65. Page 26, line 10 through line 11.
Strike: "chief" on line 10 through "conflict defender" on line 11
Insert: "public defender division administrator, appellate defender division administrator, and conflict defender division administrator"

66. Page 26, line 20.
Strike: "office"
Insert: "division"

67. Page 26, line 22.
Following: "46-15-116"
Insert: ", except that witness fees and expenses may not be paid for misdemeanor cases"

68. Page 27, line 5 through line 6.
Strike: "offices" on line 5 through "defender" on line 6
Insert: "divisions of public defender, appellate defender, and conflict defender"

69. Page 27, line 14 through line 15.
Strike: "office of chief" on line 14 through "conflict defender" on line 15
Insert: "public defender division, the appellate defender division, and the conflict defender division"

70. Page 28, line 4.
Following: line 4
Insert: "(3) By September 1, 2018, the office shall report to the Law and Justice Interim Committee on the status of the termination of the public defender advisory committee."

71. Page 28, line 7.
Strike: "**office of state chief public defender**"
Insert: "**public defender division**"

72. Page 28, line 8.
Strike: "an office of state chief public defender"
Insert: "a public defender division"

73. Page 28, line 9.
Strike: "office is the chief public defender"
Insert: "division is the public defender division administrator"

74. Page 28, line 10 through line 12.
Strike: "chief public" on line 10 through "defender" on line 11
Insert: "public defender division administrator"
Strike: "chief public" on line 11 through "defender" on line 12

Insert: "public defender division administrator"

75. Page 28, line 15.
Strike: "chief public defender"
Insert: "public defender division administrator"

76. Page 28, line 16.
Strike: "office of ~~state~~ chief public defender"
Insert: "public defender division"

77. Page 28, line 27.
Strike: "office of chief public defender"
Insert: "public defender division"

78. Page 29, line 26.
Strike: **"Chief public defender"**
Insert: **"Public defender division administrator"**

79. Page 29, line 27.
Strike: "chief public defender"
Insert: "public defender division administrator"

80. Page 30, line 8.
Strike: "[section 27]"
Insert: "[section 26]"

81. Page 30, line 17.
Strike: "office"
Insert: "division"

82. Page 30, line 25.
Strike: "chief public defender"
Insert: "public defender division administrator"

83. Page 30, line 28.
Strike: **"Office of chief appellate defender -- chief appellate defender"**
Insert: **"Appellate defender division -- appellate defender division administrator"**

84. Page 30, line 28 through line 29.
Strike: "office of" on line 28 through "chief appellate defender." on line 29
Insert: "appellate defender division."
Strike: "office of chief appellate defender" on line 29
Insert: "appellate defender division"

85. Page 30, line 30.
Strike: "chief appellate defender"

Insert: "appellate defender division administrator"

86. Page 31, line 1.
Strike: "office of chief appellate defender"
Insert: "appellate defender division"
Strike: "chief appellate defender"
Insert: "appellate defender division administrator"

87. Page 31, line 5.
Strike: "chief appellate defender"
Insert: "appellate defender division administrator"

88. Page 31, line 6.
Strike: "chief appellate defender"
Insert: "appellate defender division administrator"

89. Page 31, line 8.
Strike: "chief appellate defender"
Insert: "appellate defender division administrator"

90. Page 31, line 9 through line 10.
Strike: "office of the chief appellate" on line 9 through "defender" on line 10
Insert: "appellate defender division"

91. Page 31, line 11.
Strike: "office of chief appellate defender"
Insert: "appellate defender division"

92. Page 31, line 17.
Strike: "office of chief appellate defender"
Insert: "the appellate defender division"

93. Page 31, line 21.
Strike: "office of chief appellate defender"
Insert: "appellate defender division"

94. Page 31, line 23.
Strike: "services office provided for in [section 27]"
Insert: "services division provided for in [section 26]"

95. Page 31, line 24 through line 25.
Strike: "office of chief" on line 24 through "defender" on line 25
Insert: "appellate defender division"

96. Page 31, line 29.
Strike: "chief appellate defender"
Insert: "appellate defender division administrator"

97. Page 32, line 2 through line 3.
Strike: "office" on line 2 through "[section 27]" on line 3
Insert: "division provided for in [section 26]"

98. Page 32, line 4.
Strike: "administrator of the central services office"
Insert: "central services division administrator"

99. Page 32, line 20.
Strike: "chief public defender"
Insert: "public defender division administrator"

100. Page 32, line 23.
Strike: "chief public defender"
Insert: "public defender division administrator"

101. Page 33, line 1.
Strike: "chief public defender"
Insert: "public defender division administrator"

102. Page 33, line 3.
Strike: "chief public defender"
Insert: "public defender division administrator"

103. Page 33, line 7 through line 8.
Strike: "chief public" through "defender" on line 8
Insert: "public defender division administrator"

104. Page 33, line 9.
Strike: "chief public defender"
Insert: "public defender division administrator"

105. Page 33, line 10.
Strike: "chief public defender"
Insert: "public defender division administrator"

106. Page 33, line 17.
Strike: "office provided for in [section 27]"
Insert: "division provided for in [section 26]"

107. Page 33, line 20.
Strike: "office"
Insert: "division"

108. Page 33, line 21 through line 22.
Strike: "administrator" on line 21 through "office" on line 22
Insert: "central services division administrator"

109. Page 34, line 4.
Strike: "appearing before the following specialty courts"

110. Page 34, line 5.
Strike: "fee:"
Insert: "fee."

111. Page 34, line 6 through line 11.
Strike: line 6 through line 11 in their entirety

112. Page 34, line 27 through line 28.
Strike: "chief public defender" on line 27 through "conflict defender" on line 28
Strike: "public defender division administrator, deputy public defenders, appellate defender division administrator, and conflict defender division administrator."

113. Page 35, line 19.
Strike: "[section 3]"
Insert: "[section 1]"

114. Page 37, line 1.
Strike: "[section 3]"
Insert: "[section 1]"

115. Page 38, line 6.
Strike: "[section 3]"
Insert: "[section 1]"

116. Page 39, line 11.
Strike: "[section 3]"
Insert: "[section 1]"

117. Page 40, line 5.
Strike: "[section 3]"
Insert: "[section 1]"

118. Page 40, line 11.
Strike: "[section 3]"
Insert: "[section 1]"

119. Page 40, line 19.
Strike: "[section 3]"
Insert: "[section 1]"

120. Page 41, line 11.
Strike: "[section 3]"
Insert: "[section 1]"

121. Page 43, line 30.
Strike: "[section 3]"
Insert: "[section 1]"

122. Page 44, line 27.
Strike: "[section 3]"
Insert: "[section 1]"

123. Page 45, line 9.
Strike: "[section 3]"
Insert: "[section 1]"

124. Page 45, line 19 through line 20.
Strike: "[section" on line 19 through "3]" on line 20
Insert: "[section 1]"

125. Page 46, line 15.
Strike: "[section 3]"
Strike: "[section 1]"

126. Page 47, line 1.
Following: line 1
Insert: "NEW SECTION. **Section 45. {standard} Repealer.** The following section of the Montana Code Annotated is repealed:
2-15-1028. Public defender commission.
{*Internal References to 2-15-1028: 47-1-103 47-1-202*}"

127. Page 47, line 4.
Strike: "governor"
Insert: "director of the department of administration"

128. Page 47, line 4 through line 5.
Strike: "[section" on line 4 through "3]" on line 5
Insert: "[section 1]"

129. Page 47, line 5.
Strike: "January 1, 2018"
Insert: "July 1, 2017"

130. Page 47, line 8.
Strike: "[Section 3]"
Insert: "[Section 1]"

131. Page 47, line 9.
Strike: "[section 3]"
Insert: "[section 1]"

132. Page 47, line 10.
Strike: "[Sections 27 and 28]"

Insert: "[Sections 26 and 27]"

133. Page 47, line 11.
Strike: "[sections 27 and 28]"
Insert: "[sections 26 and 27]"

134. Page 47, line 13.
Strike: "[section 3]"
Insert: "[section 1]"

135. Page 47, line 23.
Following: line 23
Insert: "NEW SECTION. **Section 49. {standard} Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective on July 1, 2017.

(2) [Sections 1 and 46] are effective on passage and approval.

(3) [Section 45] is effective July 1, 2019."

- END -

EXHIBIT 2
DATE 1/16/17
HB 77

Amendments to House Bill No. 77
1st Reading Copy

Requested by Representative Kimberly Dudik

For the House Judiciary Committee

Prepared by Helen Thigpen
January 16, 2017 (7:59am)

1. Page 20, line 18.
Following: "~~report~~"
Insert: "report"

2. Page 21, line 21.
Strike: "and"

3. Page 21, line 23.
Strike: "."
Insert: "; and
(e) examine workloads and workload standards for all levels within the office of state public defender and include its findings in the biennial report provided for in [section 28]."

- END -

Explanation - This amendment would require the director of the office of state public defender to examine workloads and workload standards for all levels of the office of state public defender. The findings would be included in the report submitted in Section 28 of HB 77. If both this amendment and HB007701.AHT pass, technical adjustments will be made.

EXHIBIT 3
DATE 1/16/17
HB 77

THE COMPLETE TEXT OF CONSTITUTIONAL INITIATIVE NO. 116 (CI-116)

WHEREAS, the People of the State of Montana find that a crime victim in Montana is entitled to enhanced, specific, and meaningful rights to participate in criminal and youth court proceedings and enact the following new section of Article II of The Constitution of the State of Montana. The section is named for a noted victim of crime, Marsy, in whose name many states have enacted comparable reforms.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Article II of The Constitution of the State of Montana is amended by adding a new section 36 that reads:

Section 36. Rights of crime victims. (1) To preserve and protect a crime victim's right to justice, to ensure a crime victim has a meaningful role in criminal and juvenile justice systems, and to ensure that a crime victim's rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to a criminal defendant and a delinquent youth, a crime victim has the following rights, beginning at the time of victimization:

(a) to due process and to be treated with fairness and respect for the victim's dignity;

(b) to be free from intimidation, harassment, and abuse;

(c) to be reasonably protected from the accused and any person acting on the accused's behalf;

(d) to have the victim's safety and welfare considered when setting bail and making release decisions;

(e) to prevent the disclosure of information that could be used to locate or harass the victim or that contains confidential or privileged information about the victim;

(f) to privacy, including the right to refuse an interview, deposition, or other discovery request and to set reasonable conditions on the conduct of any interaction to which the victim consents;

(g) to receive reasonable, accurate, and timely notice of and to be present at all proceedings involving the criminal conduct, plea, sentencing, adjudication, disposition, release, or escape of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

(h) to be promptly notified of any release or escape of the accused;

(i) to be heard in any proceeding involving the release, plea, sentencing, disposition, adjudication, or parole of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

(j) to confer with the prosecuting attorney;

(k) to provide information regarding the impact the offender's conduct had on the victim for inclusion in the presentence or predisposition investigation report and to

have the information considered in any sentencing or disposition recommendations submitted to the court;

(l) to receive a copy of any presentence report and any other report or record relevant to the exercise of a right of the victim, except for those portions made confidential by law;

(m) to the prompt return of the victim's property when no longer needed as evidence in the case;

(n) to full and timely restitution. All money and property collected from a person who has been ordered to make restitution must be applied first to the restitution owed to the victim before paying any amounts owed to the government.

(o) to proceedings free from unreasonable delay and to a prompt and final conclusion of the case and any related postjudgment proceedings;

(p) to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the offender, including any scheduled release date, actual release date, or escape;

(q) to be informed of clemency and expungement procedures; to provide information to the Governor, the court, any clemency board, or any other authority and to have that information considered before a decision is made; and to be notified of any decision before the release of the offender; and

(r) to be informed of the above rights and to be informed that the victim may seek the advice and assistance of an attorney with respect to the above rights. This information must be made available to the general public and provided to all crime victims on what is referred to as a Marsy's card.

(2) A victim, the victim's attorney, the victim's legal representative, or the prosecuting attorney at the request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to the victim by law in any trial or appellate court or any other authority with jurisdiction over the case as a matter of right. The court or other authority shall act promptly on the request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right must be clearly stated on the record.

(3) This section may not be construed to deny or disparage other rights possessed by victims. This section applies to criminal and youth court proceedings, is self-executing, and requires no further action by the Legislature.

(4) As used in this section, the following definitions apply:

(a) "Crime" means an act defined as a felony, misdemeanor, or delinquency under state law.

(b) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime.

(i) The term includes:

(A) a spouse, parent, grandparent, child, sibling, grandchild, or guardian of the victim;

(B) a person with a relationship to the victim that is substantially similar to a relationship described in subsection (4)(b)(i)(A); and

(C) a representative of a victim who is a minor or who is deceased, incompetent or incapacitated.

(ii) The term does not include the accused or a person who the court believes would not act in the best interests of a minor or of a victim who is deceased, incompetent or incapacitated.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Alan Doane, on February 8, 2017 at 8:00 AM, in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Alan Doane, Chair (R)
Rep. Seth Berglee, Vice Chair (R)
Rep. Virginia Court, Vice Chair (D)
Rep. Laurie Bishop (D)
Rep. Bob Brown (R)
Rep. Jennifer Eck (D)
Rep. Ellie Hill Smith (D)
Rep. Kathy Kelker (D)
Rep. Theresa Manzella (R)
Rep. Nate McConnell (D)
Rep. Shane A. Morigeau (D)
Rep. Dale Mortensen (R)
Rep. Zac Perry (D)
Rep. Matt Regier (R)
Rep. Lola Sheldon-Galloway (R)
Rep. Barry Usher (R)
Rep. Kirk Wagoner (R)

Members Excused:

Rep. Bill Harris (R)
Rep. Casey Knudsen (R)

Members Absent: None

Staff Present: Sara Fleming, Committee Secretary
Helen Thigpen, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 378, 2/6/2017; HB 379, 2/6/2017
Executive Action:	HB 62, HB 77, HB 280, HB 302, HB 306, HB 342

HEARING ON HB 378

Opening Statement by Sponsor:

00:00:05 Rep. Kimberly Dudik (D), HD 94, opened the hearing on HB 378, Generally revise criminal law.

00:03:39 Rep. C. Knudsen joined the meeting

Proponents' Testimony:

00:05:57 Dana Toole, Department of Justice (DOJ)
00:06:24 Matt Brower, Montana Catholic Conference, Diocese of Helena, Diocese of Bozeman
00:07:52 Laura Smith, Department of Health and Human Services (DPHHS)

Opponents' Testimony: None

Informational Testimony:

00:08:34 SK Rossi, American Civil Liberties Union (ACLU)

Questions from Committee Members and Responses:

00:09:42 Rep. McConnell
00:10:00 SK Rossi, ACLU
00:10:25 Rep. McConnell
00:10:42 Rep. Dudik
00:11:24 Vice Chair Berglee
00:11:45 Rep. Dudik
00:12:15 Rep. Sheldon-Galloway
00:12:43 Rep. Dudik
00:13:45 Rep. Eck
00:14:21 Rep. Dudik
00:14:57 Rep. Eck
00:16:02 Dana Toole, DOJ
00:18:30 Rep. Hill Smith
00:19:26 SK Rossi, ACLU
00:20:01 Rep. Hill Smith
00:20:38 Rep. Dudik

Closing by Sponsor:

00:21:30 Rep. Dudik

HEARING ON HB 379

Opening Statement by Sponsor:

00:22:26 Rep. Kimberly Dudik (D), HD 94, opened the hearing on HB 379, Revise laws regarding human trafficking and online advertising.

Proponents' Testimony:

00:31:27 Matt Brower, Montana Catholic Conference, Diocese of Helena, Diocese of Bozeman, Montana Association of Christians
00:32:46 Laura Smith, Department of Health and Human Services (DPHHS)

Opponents' Testimony:
00:33:54 SK Rossi, American Civil Liberties Union (ACLU)
00:35:47 Mark Baker, AT&T, Charter Communications
EXHIBIT(juh28a01)

Informational Testimony: None

Questions from Committee Members and Responses:
00:38:13 Rep. Kelker
00:38:51 Rep. Dudik
00:41:53 Rep. Wagoner
00:42:32 Rep. Dudik
00:44:49 Rep. C. Knudsen
00:45:53 Rep. Dudik
00:46:36 Rep. Usher
00:48:16 Rep. Dudik
00:50:02 Rep. Usher
00:50:51 Dana Toole, Department of Justice (DOJ)
00:51:07 Rep. Eck
00:51:44 Rep. Dudik

Closing by Sponsor:
00:53:43 Rep. Dudik

00:55:56 Recess
01:29:13 Reconvene

EXECUTIVE ACTION ON HB 62

Discussion:
01:30:13 Helen Thigpen, LSD

01:30:35 **Motion:** Rep. Berglee moved that **HB 62 DO PASS AS PREVIOUSLY AMENDED**.

Discussion:
01:30:54 Chair Doane

01:31:01 **Vote:** Motion carried unanimously by voice vote. Rep. Harris and Rep. Hill Smith voted by proxy.

EXECUTIVE ACTION ON HB 77

Discussion:
01:31:45 Helen Thigpen, LSD

01:32:18 **Motion/Vote:** Rep. Berglee moved that **HB 77 DO PASS AS PREVIOUSLY AMENDED**. Motion carried unanimously by voice vote. Rep. Harris and Rep. Hill Smith voted by proxy.

EXECUTIVE ACTION ON HB 342

Discussion:
01:32:51 Helen Thigpen, LSD

01:33:19 **Motion:** Rep. Berglee moved that **HB 342 DO PASS**.

Discussion:
01:33:25 Rep. Kelker
01:34:14 Chair Doane
01:34:19 Rep. B. Brown
01:34:46 Rep. Manzella
01:36:17 Vice Chair Court
01:38:19 Vice Chair Berglee
01:39:19 Chair Doane

01:39:37 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Harris and Rep. Hill Smith voted by proxy.

EXECUTIVE ACTION ON HB 306

Discussion:
01:41:06 Helen Thigpen, LSD

01:41:17 **Motion:** Rep. Berglee moved that **HB 306 DO PASS**.

Discussion:
01:41:25 Rep. Kelker

01:42:22 **Vote:** Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Harris and Rep. Hill Smith voted by proxy.

EXECUTIVE ACTION ON HB 280

Discussion:
01:43:49 Helen Thigpen, LSD

01:44:21 **Motion/Vote:** Rep. Berglee moved that **HB 280 DO PASS AS PREVIOUSLY AMENDED**. Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Harris and Rep. Hill Smith voted by proxy.

EXECUTIVE ACTION ON HB 302

01:45:59 **Motion/Vote:** Rep. Berglee moved to **RECONSIDER THE ACTION** on **HB 302**. Motion carried 11-8 by roll call vote with Rep. Bishop, Rep. Court, Rep. Eck, Rep. Hill Smith, Rep. Kelker, Rep. McConnell, Rep. Morigeau and Rep. Perry voting no. Rep. Harris and Rep. Hill Smith voted by proxy.

01:47:32 **Motion:** Rep. Berglee moved that **HB 302 DO PASS**.

Discussion:
01:47:50 Rep. Wagoner

01:48:26 **Vote:** Motion carried unanimously by roll call vote. Rep. Harris and Rep. Hill Smith voted by proxy.

ADJOURNMENT

Adjournment: 01:50:22

_____
Sara Fleming, Secretary

sf

Additional Documents:

EXHIBIT(juh28aad.pdf)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: Chair Nancy Ballance, on February 14, 2017 at 3:00 P.M., in Room 102 Capitol

ROLL CALL

Members Present:

Rep. Randy Brodehl, Vice Chair (R)
Rep. Kelly McCarthy, Vice Chair (D)
Rep. Dan Bartel (R)
Rep. Tom Burnett (R)
Rep. Rob Cook (R)
Rep. Mike Cuffe (R)
Rep. Kimberly Dudik (D)
Rep. Janet Ellis (D)
Rep. Bradley Hamlett (D)
Rep. Kenneth L. Holmlund (R)
Rep. Mike Hopkins (R)
Rep. Jim Keane (D)
Rep. Jon A. Knokey (R)
Rep. Ryan Lynch (D)
Rep. Jimmy Patelis (R)
Rep. Rae Peppers (D)
Rep. Marilyn Ryan (D)
Rep. Brad Tschida (R)

Members Excused:

Rep. Nancy Ballance, Chair (R)
Rep. Carl Glimm (R)
Rep. Donald W. Jones (R)
Rep. Tom Woods (D)

Members Absent: None

Staff Present: Julie Johnson, Legislative Branch
Joe Triem, Legislative Branch
Sherri Row, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 62, 2/13/2017; HB 77, 2/13/2017; HB 302, 2/13/2017; HB 335, 2/13/2017

00:00:11 Chair Ballance relinquished the chair to Rep. Holmlund

HEARING ON HB 62

Opening Statement by Sponsor:
00:01:28 Rep. Randy Brodehl (R), HD 9, opened the hearing on HB 62, Dept. of Revenue to collect fees for public defender services.

Proponents' Testimony:
00:02:50 Amy Sassano, Office of Budget and Program Planning (OBPP)

Opponents' Testimony: None

Informational Testimony:
00:03:48 Steve Austin, Department of Revenue (DOR)

Questions from Committee Members and Responses: None

Closing by Sponsor:
00:04:24 Rep. Brodehl

HEARING ON HB 77

Opening Statement by Sponsor:
00:04:53 Rep. Randy Brodehl (R), HD 9, opened the hearing on HB 77, Revise public defender system and provide for a director hired by DOA.

00:07:27 Rep. Glimm joined the meeting

Proponents' Testimony:
00:07:34 Amy Sassano, Office of Budget and Program Planning (OBPP)

00:08:50 Rep. Jones joined the meeting

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
00:09:33 Rep. Ellis
00:10:12 Rep. Brodehl
00:10:19 Rep. Cuffe
00:10:44 Rep. Brodehl
00:11:30 Rep. Cuffe
00:12:18 Rep. Dudik
00:12:39 Rep. Brodehl

Closing by Sponsor:
00:13:16 Rep. Brodehl

HEARING ON HB 302

Opening Statement by Sponsor:
00:13:57 Rep. Moffie Funk (D), HD 82, opened the hearing on HB 302, Revise laws related to payment of costs at county detention centers.

Proponents' Testimony:
00:14:44 Eric Bryson, Montana Association of Counties (MACo)
EXHIBIT(aph32a01)

00:17:38 Brian Thompson, Montana Sheriffs and Peace Officers Association (MSPOA)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:
00:18:15 Vice Chair McCarthy
00:21:13 Vice Chair Brodehl
00:21:55 Rep. Funk
00:23:18 Rep. Patelis
00:24:43 Rep. Funk
00:25:22 Eric Bryson, MACo
00:27:32 Rep. Dudik
00:28:35 Eric Bryson, MACo
00:28:49 Rep. Dudik
00:28:53 Rep. Woods joined the meeting
00:29:21 Eric Bryson, MACo
00:30:18 Rep. Dudik
00:30:34 Eric Bryson, MACo
00:31:17 Vice Chair Brodehl
00:31:42 Rep. Keane
00:32:03 Eric Bryson, MACo
00:32:15 Rep. Lynch
00:34:53 Eric Bryson, MACo

Closing by Sponsor:
00:35:09 Rep. Funk

HEARING ON HB 335

Opening Statement by Sponsor:
00:35:44 Rep. Jeremy Trebas (R), HD 25, opened the hearing on HB 335, Provide exemption from income tax withholding.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:
00:37:49 Aaron McNay, Department of Revenue (DOR)

Questions from Committee Members and Responses:
00:38:15 Rep. Tschida
00:38:42 Rep. Trebas
00:38:59 Rep. Tschida
00:39:10 Aaron McNay, DOR
00:40:01 Rep. Tschida
00:40:59 Aaron McNay, DOR

Closing by Sponsor:
00:41:28 Rep. Trebas

00:42:42 Chair Holmlund

ADJOURNMENT

Adjournment: 00:43:13

_____
Sherri Row, Secretary

sr

Additional Documents:

EXHIBIT(aph32aad.pdf)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: Chair Nancy Ballance, on February 15, 2017 at 3:00 P.M., in Room 102 Capitol

ROLL CALL

Members Present:

Rep. Nancy Ballance, Chair (R)
Rep. Randy Brodehl, Vice Chair (R)
Rep. Kelly McCarthy, Vice Chair (D)
Rep. Dan Bartel (R)
Rep. Tom Burnett (R)
Rep. Mike Cuffe (R)
Rep. Kimberly Dudik (D)
Rep. Janet Ellis (D)
Rep. Carl Glimm (R)
Rep. Bradley Hamlett (D)
Rep. Mike Hopkins (R)
Rep. Donald W. Jones (R)
Rep. Jim Keane (D)
Rep. Jon A. Knokey (R)
Rep. Ryan Lynch (D)
Rep. Jimmy Patelis (R)
Rep. Rae Peppers (D)
Rep. Marilyn Ryan (D)
Rep. Brad Tschida (R)

Members Excused:

Rep. Rob Cook (R)
Rep. Kenneth L. Holmlund (R)
Rep. Tom Woods (D)

Members Absent: None

Staff Present: Julie Johnson, Legislative Branch
Joe Triem, Legislative Branch
Sherri Row, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: HB 228, 2/13/2017; HB 339, 2/13/2017
Executive Action: HB 62, HB 77; HB 110; HB 126; HB 187; HB 198; HB 205; HB 257; HB 302; HB 335

HEARING ON HB 228

Opening Statement by Sponsor:

00:01:28 Rep. Jim Keane (D), HD 73, opened the hearing on HB 228, Provide funding for sage grouse stewardship.

Proponents' Testimony:

00:03:11 John Tubbs, Director, Department of Natural Resources and Conservation (DNRC)
00:04:53 Dave Galt, Montana Petroleum Association
00:05:23 Rep. Holmlund joined the meeting
00:05:33 Errol Rice, Montana Stockgrowers Association (MSGA)
00:06:40 Jessica Sena, Montana Petroleum Association
00:07:48 Peggy Trenk, Treasure State Resources Association
00:08:30 Chelcie Cargill, Montana Farm Bureau Federation (MFBF)
00:09:23 Mark Aagenes, Montana Nature Conservancy
00:09:51 Elena Evans, Montana Association of Conservation Districts
00:10:20 Mike Penfold, Our Montana

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:10:57 Rep. Burnett
00:12:45 Rep. Keane
00:13:22 Rep. Knokey
00:15:31 Rep. Keane
00:15:46 Vice Chair Brodehl
00:16:15 John Tubbs, DNRC
00:18:11 Rep. Hamlett
00:26:02 John Tubbs, DNRC
00:26:43 Rep. Hamlett
00:27:06 Rep. Keane
00:28:36 Rep. Burnett
00:28:52 John Tubbs, DNRC
00:29:53 Chair Ballance
00:31:17 Dave Galt,
00:33:29 Chair Ballance
00:34:02 Dave Galt,
00:34:30 John Tubbs, DNRC

Closing by Sponsor:

00:36:27 Rep. Keane

HEARING ON HB 339

Opening Statement by Sponsor:

00:37:46 Rep. Carl Glimm (R), HD 6, opened the hearing on HB 339, Revise laws related to exempt appropriations of water.

Proponents' Testimony:

00:41:09 Abigal St. Lawrence, Montana Association of Realtors, Montana Building Industry Association (MBIA)
00:41:44 Rep. Cook joined the meeting
00:43:42 Krista Lee Evans, Senior Water Rights Coalition (SWRC), Association Gallatin Agricultural Irrigators (AGAI), Montana Stockgrowers Association (MSGA), Montana Farm Bureau (MFB)

Opponents' Testimony:

00:45:56 Jeff Barber, Clark Fork Coalition, Montana Trout Unlimited
00:47:39 Tim Burton, Montana League of Cities and Towns

Informational Testimony:

00:48:45 Brian Bramblett, Department of Natural Resources and Conservation (DNRC)
00:49:12 Tom Martin, Montana Department of Transportation (MDT)

Questions from Committee Members and Responses:

00:49:44 Chair Ballance
00:56:58 Tom Martin, MDT

Closing by Sponsor:

00:57:17 Rep. Glimm

00:59:57 Recessed
01:27:33 Reconvened - with Rep. Woods present

EXECUTIVE ACTION ON HB 62

01:27:49 **Motion/Vote:** Rep. Brodehl moved that **HB 62 DO PASS**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 77

01:28:32 **Motion:** Rep. Brodehl moved that **HB 77 DO PASS**.

01:28:41 **Motion/Vote:** Rep. Brodehl moved that **HB 77 BE AMENDED**. Motion carried unanimously by voice vote.

EXHIBIT(aph33a01)

01:29:36 **Motion/Vote:** Rep. Brodehl moved that **HB 77 DO PASS AS AMENDED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 126

01:30:06 **Motion/Vote:** Rep. Brodehl moved that **HB 126 DO PASS**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 187

01:31:26 **Motion/Vote:** Rep. Brodehl moved that **HB 187 DO PASS**. Motion carried 19-3 by roll call vote with Rep. Brodehl, Rep. Burnett and Rep. D. Jones voting no.

EXECUTIVE ACTION ON HB 205

01:32:58 **Motion:** Rep. Brodehl moved that **HB 205 DO PASS**.

01:33:07 **Motion/Vote:** Rep. McCarthy moved that **HB 205 BE AMENDED**. Motion carried 21-1 by voice vote with Rep. Tschida voting no.
EXHIBIT(aph33a02)

01:34:33 **Motion/Vote:** Rep. Brodehl moved that **HB 205 DO PASS AS AMENDED**. Motion carried 17-5 by roll call vote with Rep. Dudik, Rep. Ellis, Rep. Keane, Rep. Lynch and Rep. Woods voting no.

EXECUTIVE ACTION ON HB 257

01:36:04 **Motion/Vote:** Rep. Brodehl moved that **HB 257 DO PASS**. Motion carried 17-5 by roll call vote with Rep. Brodehl, Rep. Glimm, Rep. Holmlund, Rep. D. Jones and Rep. Patelis voting no.

EXECUTIVE ACTION ON HB 302

01:37:54 **Motion/Vote:** Rep. Brodehl moved that **HB 302 BE TABLED**. Motion carried 21-1 by voice vote with Rep. Hamlett voting no.

EXECUTIVE ACTION ON HB 335

01:38:44 **Motion/Vote:** Rep. Brodehl moved that **HB 335 BE TABLED**. Motion carried 20-2 by roll call vote with Rep. Hamlett and Rep. Woods voting no.

EXECUTIVE ACTION ON HB 110

01:40:38 **Motion:** Rep. Brodehl moved that **HB 110 DO PASS**.

01:40:46 **Motion/Vote:** Rep. Glimm moved that **HB 110 BE AMENDED**. Motion carried unanimously by voice vote.
EXHIBIT(aph33a03)

01:41:34 **Motion/Vote:** Rep. Brodehl moved that **HB 110 DO PASS AS AMENDED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 198

01:42:08 **Motion:** Rep. Brodehl moved that **HB 198 DO PASS**.

01:42:10 Vice Chair Brodehl and Rep. Glimm left the meeting

01:42:13 **Motion:** Rep. McCarthy moved that **HB 198 BE AMENDED**.
EXHIBIT(aph33a04)

Discussion:
01:43:19 Kris Wilkinson, Legislative Fiscal Division (LFD)
01:48:18 Rep. Bartel
EXHIBIT(aph33a05)

01:48:37 Rep. Dudik
01:48:59 Kris Wilkinson, LFD
01:49:17 Rep. Dudik
01:49:23 Kris Wilkinson, LFD
01:49:52 Rep. Dudik
01:50:01 Kris Wilkinson, LFD
01:50:09 Rep. Bartel
01:51:16 Vice Chair McCarthy

01:54:18 **Vote:** Motion failed 9-13 by roll call vote with Rep. Dudik, Rep. Ellis, Rep. Hamlett, Rep. Keane, Rep. Lynch, Rep. McCarthy, Rep. Peppers, Rep. Ryan and Rep. Woods voting aye. Rep. Brodehl and Rep. Glimm voted by proxy.

01:55:56 **Motion/Vote:** Rep. Holmlund moved that **HB 198 BE AMENDED**. Motion carried unanimously by voice vote. Rep. Brodehl and Rep. Glimm voted by proxy.
EXHIBIT(aph33a06)

01:57:28 **Substitute Motion/Vote:** Rep. McCarthy made a substitute motion that **HB 198 BE TABLED**. Substitute Motion failed 9-13 by roll call vote with Rep. Dudik, Rep. Ellis, Rep. Hamlett, Rep. Keane, Rep. Lynch, Rep. McCarthy, Rep. Peppers, Rep. Ryan and Rep. Woods voting aye. Rep. Brodehl and Rep. Glimm voted by proxy.

01:57:40 Rep. Glimm joined the meeting

01:58:58 **Motion/Vote:** Rep. Holmlund moved that **HB 198 DO PASS AS AMENDED**. Motion carried 13-9 by roll call vote with Rep. Dudik, Rep. Ellis, Rep. Hamlett, Rep. Keane, Rep. Lynch, Rep. McCarthy, Rep. Peppers, Rep. Ryan and Rep. Woods voting no. Rep. Brodehl voted by proxy.

02:00:59 Chair Ballance

ADJOURNMENT

Adjournment: 02:01:16

_____
Sherri Row, Secretary

sr

Additional Documents:

EXHIBIT(aph33aad.pdf)

EXHIBIT 1
DATE 2/15/2017
HB 77

Amendments to House Bill No. 77
2nd Reading Copy

Requested by Representative Randy Brodehl

For the House Appropriations Committee

Prepared by Julie Johnson
February 15, 2017 (10:03am)

1. Page 21, line 26.
Following: line 25
Insert: "(6) A public defender may not be assigned to act as court-appointed counsel in a proceeding under the Drug Offender Accountability and Treatment Act, Title 46, chapter, 1, part 11, or under the Mental Health Treatment Court Act, Title 46, chapter 1, part 12."

2. Page 26, line 22 through line 23.
Strike: "THE CENTRAL" on line 22 through "ARE ELIGIBLE."

- END -

MINUTES

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on March 10, 2017 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Carlie Boland (D)
Sen. Jen Gross (D)
Sen. Steve Hinebauch (R)
Sen. Jedediah Hinkle (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Diane Sands (D)

Members Excused:

Sen. Scott Sales (R)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Prudence Gildroy, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 217, 2/23/2017; HB 77, 2/23/2017; HB 147, 2/23/2017; HB 149, 2/23/2017

Executive Action: HB 276 Be Concurred In; HB 231 Be Concurred In As Amended; HB 342 Be Concurred In; HB 370 Be Concurred In

HEARING ON HB 217

Opening Statement by Sponsor:

00:01:10 Rep. Randy Brodehl (R), HD 9, opened the hearing on HB 217, Revise replacement schedule for regular license plates.

Proponents' Testimony:

00:04:27 Lisa Wanke, Motor Vehicle Division, Department of Justice (DOJ)
00:04:48 Eric Bryson, Montana Association of Counties, Montana County Treasurers Association

Opponents' Testimony: None

Informational Testimony:

00:05:27 Mark Taylor, 3M Company

Questions from Committee Members and Responses:

00:07:16 Sen. Sands
00:07:55 Ms. Wanke, DOJ
00:08:05 Sen. Sands
00:08:20 Ms. Wanke
00:08:26 Sen. Sands
00:08:37 Rep. Brodehl
00:08:57 Sen. Sands
00:09:14 Rep. Brodehl
00:10:00 Sen. Hinebauch
00:10:19 Rep. Brodehl
00:10:29 Sen. MacDonald
00:10:57 Mr. Taylor, 3M
00:11:25 Sen. MacDonald
00:11:43 Mr. Taylor

Closing by Sponsor:

00:12:13 Rep. Brodehl

HEARING ON HB 77

Opening Statement by Sponsor:

00:14:00 Rep. Randy Brodehl (R), HD 9, opened the hearing on HB 77, Revise public defender system and provide for a director hired by DOA.

00:15:40 Sen. Gross joined the meeting.

Proponents' Testimony:

00:16:30 Amy Sassano, Office of Budget and Program Planning
00:17:19 Mark Murphy, Montana County Attorneys Association

Opponents' Testimony: None

Informational Testimony:

00:21:12 Peter Ohman, Office of Public Defender (OPD)

Questions from Committee Members and Responses:

00:21:32 Sen. MacDonald
00:22:17 Mr. Ohman, OPD

Closing by Sponsor:

00:23:11 Rep. Brodehl

HEARING ON HB 147

Opening Statement by Sponsor:

00:24:28 Rep. Daniel Zolnikov (R), HD 45, opened the hearing on HB 147, Requiring search warrant for gov access to electronic devices.

Proponents' Testimony:

00:31:19 John Santy, representing himself
00:32:38 Michael Sangray, representing himself
00:33:11 Tucker Finley, Montana Public Interest Research Group
00:34:05 Nanette Gilbertson, Montana Library Association
00:35:01 Wes Krawczyk, representing himself
EXHIBIT(jus50a01)
EXHIBIT(jus50a02)

00:38:25 Eric Fulton, representing himself
00:41:26 Matthew Gannen, representing himself
00:43:42 Nicholas Schwaderer, representing himself
00:47:23 SK Rossi, ACLU of Montana

Opponents' Testimony:

00:48:16 Adrianne Slaughter, Department of Corrections (COR)
00:49:27 Chad Parker, Department of Justice (DOJ)
EXHIBIT(jus50a03)

00:52:33 Sen. Vincent joined the meeting.

00:53:52 Mark Murphy, Montana County Attorneys Association (MCAA), Montana Association of Chiefs of Police, Montana Police Protective Association

Informational Testimony:

00:58:20 Greg Mohr, Montana Magistrates Association

Questions from Committee Members and Responses:

00:58:35 Sen. Sands
00:59:39 Ms. Slaughter, COR
01:00:15 Sen. MacDonald
01:01:28 Mr. Schwaderer, self
01:03:30 Sen. MacDonald
01:04:23 Mr. Murphy, MCAA
01:05:56 Sen. Fielder
01:06:37 Mr. Parker, DOJ
01:10:24 Sen. Fielder
01:10:52 Mr. Parker
01:11:22 Sen. Fielder
01:11:45 Mr. Murphy
01:14:52 Sen. Fielder
01:15:14 Mr. Murphy
01:16:37 Sen. Fielder
01:17:33 Rep. Zolnikov
01:18:26 Sen. Fielder
01:18:51 Rep. Zolnikov
01:19:27 Sen. Hinkle
01:20:35 Mr. Parker
01:22:16 Sen. Hinkle
01:22:41 Mr. Parker
01:24:18 Sen. Hinkle
01:24:32 Rep. Zolnikov
01:25:23 Sen. Gross
01:25:57 Rep. Zolnikov
01:27:15 Sen. MacDonald
01:28:36 Mr. Parker
01:29:25 Sen. Sands
01:29:51 Mr. Parker
01:31:06 Chair Regier
01:31:49 Rep. Zolnikov
01:32:13 Chair Regier
01:32:20 Rep. Zolnikov

Closing by Sponsor:

01:32:46 Rep. Zolnikov

HEARING ON HB 149

Opening Statement by Sponsor:

01:36:41 Rep. Daniel Zolnikov (R), HD 45, opened the hearing on HB 149, Revise privacy laws regarding license plate scanners.

EXHIBIT(jus50a04)
EXHIBIT(jus50a05)

Proponents' Testimony:

01:46:30 John Santy, representing himself
01:46:42 Eric Fulton, representing himself

01:48:44 Wes Krawczyk, representing himself
01:49:04 Mark Murphy, Montana County Attorneys Association (MCAA)
01:49:53 Spook Stang, Motor Carriers of Montana

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

01:51:07 Sen. Hinkle
01:51:31 Rep. Zolnikov
01:54:54 Sen. Hinkle
01:55:45 Rep. Zolnikov
01:58:41 Sen. MacDonald
02:00:49 Mr. Murphy, MCAA
02:02:42 Sen. MacDonald
02:03:47 Mr. Murphy
02:05:08 Sen. Fielder
02:05:54 Mr. Santy, self
02:07:08 Sen. Vincent
02:07:31 Mr. Santy
02:08:08 Sen. Vincent
02:09:01 Mr. Fulton, self

Closing by Sponsor:

02:09:41 Rep. Zolnikov

02:13:04 Recess
Sen. Vincent left the meeting.
02:23:22 Reconvene

EXECUTIVE ACTION ON HB 276

02:23:58 **Motion:** Sen. Fielder moved that **HB 276 BE CONCURRED IN**.

Discussion:

02:24:31 Sen. Boland
02:25:09 Sen. Hinkle
02:25:59 Sen. Fielder

02:26:58 **Vote:** Motion carried 8-3 by roll call vote with Sen. Hinkle, Sen. S. Sales and Sen. Vincent voting no. Sen. S. Sales, Sen. Swandal and Sen. Vincent voted by proxy. Sen. Fielder will carry the bill.

02:29:16 Sen. Sands

EXECUTIVE ACTION ON HB 231

02:30:03 **Motion:** Sen. Fielder moved that **HB 231 BE CONCURRED IN**.

Discussion:

02:30:12 Julianne Burkhardt, Legislative Services Division (LSD)

02:31:11 **Motion:** Sen. Fielder moved that **HB 231 BE AMENDED**.
EXHIBIT(jus50a06)

Discussion:

02:31:20 Ms. Burkhardt, LSD
02:32:29 Chair Regier
02:32:40 Sen. Fielder
02:32:51 Ms. Burkhardt
02:33:49 Chair Regier
02:34:02 Sen. Hinkle
02:35:20 Sen. Fielder
02:36:27 Chair Regier
02:36:43 Sen. Fielder
02:37:23 Chair Regier
02:37:44 Sen. Fielder
02:38:00 Sen. Hinkle
02:38:52 Chair Regier
02:39:07 Sen. Hinkle
02:39:18 Ms. Burkhardt

02:39:43 **Substitute Motion:** Sen. Fielder made a substitute motion that **HB 231 BE AMENDED SEGREGATING OUT #7.**

Discussion:

02:40:11 Sen. Hinkle
02:40:18 Chair Regier

02:40:33 **Vote:** Motion carried 10-1 by voice vote with Sen. Swandal voting no. Sen. S. Sales, Sen. Swandal and Sen. Vincent voted by proxy.

02:41:15 **Motion/Vote:** Sen. Fielder moved that **HB 231 BE AMENDED WITH #1, #2, #3, #4, #5, #6**.. Motion carried unanimously by voice vote. Sen. S. Sales, Sen. Swandal and Sen. Vincent voted by proxy.

02:42:19 **Motion:** Sen. Fielder moved that **HB 231 BE CONCURRED IN AS AMENDED.**

Discussion:

02:42:28 Sen. Sands
02:43:16 Chair Regier
02:43:41 Sen. Sands
02:44:01 Ms. Burkhardt
02:44:52 Sen. Boland
02:45:43 Sen. Hinkle

02:48:07 **Vote:** Motion carried 7-4 by roll call vote with Sen. Boland, Sen. Gross, Sen. MacDonald and Sen. Sands voting no. Sen. S. Sales, Sen. Swandal and Sen. Vincent voted by proxy. Sen. Webb will carry the bill.

EXECUTIVE ACTION ON HB 342

02:48:20 **Motion:** Sen. Fielder moved that **HB 342 BE CONCURRED IN**.

Discussion:

02:48:40 Julianne Burkhardt, Legislative Services Division (LSD)
02:48:48 Sen. Gross
02:49:21 Sen. Hinebauch
02:50:11 Sen. Gross
02:50:15 Sen. Hinebauch
02:50:42 Sen. Gross
02:51:43 Sen. Sands
02:52:28 Sen. Hinkle
02:53:06 Sen. Fielder
02:54:04 Sen. MacDonald

02:55:22 **Vote:** Motion carried 7-4 by roll call vote with Sen. Boland, Sen. Gross, Sen. MacDonald and Sen. Sands voting no. Sen. S. Sales, Sen. Swandal and Sen. Vincent voted by proxy. Sen. Sales will carry the bill.

Sen. Vincent entered the meeting.

EXECUTIVE ACTION ON HB 370

02:57:19 **Motion:** Sen. Fielder moved that **HB 370 BE CONCURRED IN**.

Discussion:

02:57:35 Sen. Fielder
02:58:35 Chair Regier
02:58:54 Sen. Fielder
02:59:01 Sen. Vincent

03:00:01 **Vote:** Motion carried unanimously by voice vote. Sen. S. Sales and Sen. Swandal voted by proxy. Sen. Fielder will carry the bill.

ADJOURNMENT

Adjournment: 11:00 AM

Prudence Gildroy, Secretary

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Additional Documents:

EXHIBIT(jus50aad.pdf)

MINUTES

MONTANA SENATE
65th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chair Keith Regier, on March 14, 2017 at 9:00 AM, in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Keith Regier, Chair (R)
Sen. Jennifer Fielder, Vice Chair (R)
Sen. Carlie Boland (D)
Sen. Steve Hinebauch (R)
Sen. Jedediah Hinkle (R)
Sen. Margaret (Margie) MacDonald (D)
Sen. Diane Sands (D)
Sen. Nels Swandal (R)
Sen. Chas Vincent (R)

Members Excused: Sen. Jen Gross (D)
Sen. Scott Sales (R)

Members Absent: None

Staff Present: Julianne Burkhardt, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted:	HB 129, 2/23/2017; HB 44, 3/9/2017; HB 94, 3/9/2017
Executive Action:	SB 172-Do Pass As Amended, SB 280-Do Pass As Amended, SB 276-Do Pass As Amended, HB 350-Be Concurred In, HB 349-Be Concurred In As Amended, HB 77-Be Concurred In As Amended

HEARING ON HB 44

Opening Statement by Sponsor:

00:01:47 Rep. Jeff Essmann (R), HD 54, opened the hearing on HB 44, Generally revise laws related to district court judge numbers.

Proponents' Testimony:

00:05:32 Kris Hansen, former Senator, Havre
00:12:14 Chief Justice Mike McGrath, Montana Supreme Court
EXHIBIT(jus53a01)

00:22:33 Judge Greg Todd, 13th Judicial District, Yellowstone County
EXHIBIT(jus53a02)

00:28:12 Judge Mary Jane Knisley, 13th Judicial District, Yellowstone County
00:33:55 Judge John Larson, 4th Judicial District, Missoula/Mineral County
EXHIBIT(jus53a03)
EXHIBIT(jus53a04)
EXHIBIT(jus53a05)

00:38:54 Webb Brown, Montana Chamber of Commerce
00:40:18 Bruce Spencer, president, State Bar of Montana
00:42:03 Robin Driscoll, county commissioner, Yellowstone County (YC)
00:43:14 Mark Murphy, Montana County Attorneys Association
00:45:01 Don Judge, Montana Trial Attorneys Association
00:45:36 Greg Mohr, Montana Magistrates Association
00:46:07 Ed Bartlett, Montana Judges Association

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

00:47:07 Sen. Swandal
00:47:27 Ms. Driscoll, YC
00:48:12 Chairman Regier
00:48:21 Ms. Driscoll
00:48:41 Sen. Fielder
00:49:25 Mr. Larson
00:55:37 Sen. Sands
00:56:14 Beth McLaughlin, court administrator, Montana Supreme Court
00:57:19 Chairman Regier
00:57:36 Mr. McGrath

Closing by Sponsor:

01:04:28 Rep. Essmann

HEARING ON HB 129

Opening Statement by Sponsor:

01:08:00 Rep. Ellie Hill Smith (D), HD 90, opened the hearing on HB 129, Revising laws related to privacy in communications.

Proponents' Testimony:

01:10:43 Mark Murphy, Montana County Attorneys Association (MCAA)
01:14:34 Tucker Finley, Montana Public Interest Research Group
01:15:11 Jessie Luther, Motion Picture Association of America

Opponents' Testimony:

01:16:56 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence

Informational Testimony:

01:18:50 S.K. Rossi, ACLU/MT

Questions from Committee Members and Responses:

01:19:22 Sen. Swandal
01:19:47 Mr. Murphy, MCAA
01:22:32 Sen. Hinkle
01:23:28 Rep. Hill Smith
01:25:12 Mr. Murphy
01:26:44 Chairman Regier
01:26:50 Rep. Hill Smith
01:27:25 Mr. Murphy
01:28:38 Sen. Sands
01:29:04 Mr. Murphy

Closing by Sponsor:

01:36:31 Rep. Hill Smith

HEARING ON HB 94

Opening Statement by Sponsor:

01:37:31 Rep. Frank Garner (R), HD 7, opened the hearing on HB 94, Generally revise public safety officer standards/training council laws.

Proponents' Testimony:

01:40:35 Perry Johnson, executive director, Public Officers Standards and Training Council (POST)
01:43:52 Jerry Williams, executive director, Montana Police Protective Association
01:44:50 Harold Blattie, executive director, Montana Association of Counties (MACo)

Opponents' Testimony:

01:45:41 Jon Metropoulos, Missoula Correctional Services
01:50:11 Erin McGowan, Montana Community Corrections Association
01:50:59 Greg Mohr, Montana Magistrates Association

Informational Testimony:

None

Questions from Committee Members and Responses:

01:52:48 Sen. MacDonald
01:53:21 Mr. Blattie, MACo
01:54:37 Sen. Fielder
01:55:09 Rep. Garner
01:55:27 Mr. Johnson, POST
02:00:57 Sen. MacDonald
02:01:23 Mr. Johnson

Closing by Sponsor:

02:05:47 Rep. Garner

02:07:18 Recess
02:20:18 Reconvene

Sen Swandal absent from the room.

EXECUTIVE ACTION ON SB 172

02:21:05 **Motion:** Sen. Fielder moved that **SB 172 DO PASS**.

02:21:44 **Motion:** Sen. Fielder moved that **SB 172 BE AMENDED**.
EXHIBIT(jus53a06)

Discussion:

02:23:12 Julianne Burkhardt, Legislative Services Division
02:24:25 Sen. Fielder
02:24:38 Sen. Sands
02:25:09 Sen. MacDonald
02:26:09 Sen. Fielder

02:27:09 **Vote:** Motion carried unanimously by voice vote. Sen. Gross, Sen. S. Sales and Sen. Swandal voted by proxy.

02:27:41 **Motion:** Sen. Fielder moved that **SB 172 DO PASS AS AMENDED**.

Discussion:

02:28:00 Sen. Sands
02:28:16 Sen. Hinkle
02:28:51 Sen. Fielder

Sen. Swandal entered the hearing room.

02:29:34 Sen. Sands

02:30:15 **Vote:** Motion carried unanimously by voice vote. Sen. Gross and Sen. S. Sales voted by proxy.

EXECUTIVE ACTION ON SB 280

02:31:00 **Motion:** Sen. Fielder moved that **SB 280 DO PASS**.

Discussion:

02:31:14 Julianne Burkhart, Legislative Services Division (LSD)
02:33:27 Sen. Sands

02:33:40 **Motion/Vote:** Sen. K. Regier moved that **SB 280 BE AMENDED**. Motion carried unanimously by voice vote. Sen. Gross and Sen. S. Sales voted by proxy.
EXHIBIT(jus53a07)

02:34:02 **Motion:** Sen. Fielder moved that **SB 280 DO PASS AS AMENDED**.

02:34:10 **Motion:** Sen. Fielder moved that **SB 280 BE AMENDED**.
EXHIBIT(jus53a08)

Discussion:

02:34:50 Ms. Burkhardt, LSD
02:35:48 Chairman Regier
02:35:54 Sen. Vincent
02:36:15 Chairman Regier
02:36:24 Sen. Swandal
02:36:43 Ms. Burkhardt
02:37:12 Sen. Fielder
02:37:27 Ms. Burkhardt
02:37:59 Sen. MacDonald

02:38:22 **Vote:** Motion carried 9-2 by roll call vote with Sen. Fielder and Sen. Hinkle voting no. Sen. Gross and Sen. S. Sales voted by proxy.

02:39:04 **Motion:** Sen. Fielder moved that **SB 280 DO PASS AS AMENDED**.

Discussion:

02:39:13 Sen. Hinkle
02:39:30 Ms. Burkhardt

02:39:38 **Vote:** Motion carried unanimously by roll call vote. Sen. Gross and Sen. S. Sales voted by proxy.

EXECUTIVE ACTION ON SB 276

02:40:33 **Motion:** Sen. Fielder moved that **SB 276 DO PASS**.

Discussion:

02:40:55 Julianne Burkhardt, Legislative Services Division

02:41:36 **Motion/Vote:** Sen. Fielder moved that **SB 276 BE AMENDED**. Motion carried unanimously by voice vote. Sen. Gross and Sen. S. Sales voted by proxy.
EXHIBIT(jus53a09)

02:43:12 **Motion:** Sen. Fielder moved that **SB 276 DO PASS AS AMENDED**.

Discussion:

02:43:17 Sen. MacDonald
02:44:43 Chairman Regier
02:45:06 Sen. Fielder
02:47:03 Sen. Hinkle
02:47:40 Sen. Sands

02:48:22 **Vote:** Motion carried 7-4 by roll call vote with Sen. Boland, Sen. Gross, Sen. MacDonald and Sen. Sands voting no. Sen. Gross and Sen. S. Sales voted by proxy.

EXECUTIVE ACTION ON HB 350

02:49:08 **Motion:** Sen. Fielder moved that **HB 350 BE CONCURRED IN**.

Discussion:

02:49:32 Sen. Sands

02:49:47 **Vote:** Motion carried unanimously by voice vote. Sen. Gross and Sen. S. Sales voted by proxy. Sen. Webb will carry the bill.

EXECUTIVE ACTION ON HB 349

02:50:29 **Motion:** Sen. Fielder moved that **HB 349 BE CONCURRED IN**.

02:51:03 **Motion/Vote:** Sen. Fielder moved that **HB 349 BE AMENDED**. Motion carried 10-1 by voice vote with Sen. MacDonald voting no. Sen. Gross and Sen. S. Sales voted by proxy.
EXHIBIT(jus53a10)

02:51:43 **Motion:** Sen. Fielder moved that **HB 349 BE CONCURRED IN AS AMENDED**.

Discussion:

02:52:01 Sen. Sands

02:52:12 **Vote:** Motion carried 10-1 by voice vote with Sen. MacDonald voting no. Sen. Gross and Sen. S. Sales voted by proxy. Sen. Webb will carry the bill.

EXECUTIVE ACTION ON HB 77

02:52:57 **Motion:** Sen. Fielder moved that **HB 77 BE CONCURRED IN**.

Discussion:

02:53:14 Julianne Burkhardt, Legislative Services Division (LSD)

02:54:09 **Motion:** Sen. Swandal moved that **HB 77 BE AMENDED**.
EXHIBIT(jus53a11)

Discussion:

02:55:36 Sen. Sands
02:55:40 Sen. Swandal
02:55:43 Sen. Boland

02:55:59 **Vote:** Motion carried unanimously by voice vote. Sen. Gross and Sen. S. Sales voted by proxy.

02:56:17 **Motion:** Sen. Fielder moved that **HB 77 BE CONCURRED IN AS AMENDED**.

02:56:28 **Motion:** Sen. Fielder moved that **HB 77 BE AMENDED**.
EXHIBIT(jus53a12)

Discussion:

02:56:37 Ms. Burkhardt, LSD

02:58:50 **Vote:** Motion carried unanimously by voice vote. Sen. Gross and Sen. S. Sales voted by proxy.

02:59:03 **Motion/Vote:** Sen. Fielder moved that **HB 77 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by roll call vote. Sen. Gross and Sen. S. Sales voted by proxy. Sen. Swandal will carry the bill.

Committee Business:

03:00:18 Chairman Regier
03:00:45 Sen. Hinebauch
03:01:11 Sen. Sands

ADJOURNMENT

Adjournment: 12:01 P.M.

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Pam Schindler, Secretary

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Additional Documents

Additional Documents:

EXHIBIT(jus53aad.pdf)

SENATE JUDICIARY
Exhibit No. 11
Date: 3/14/17
Bill No. HB77

Amendments to House Bill No. 77
3rd Reading Copy

Requested by Senator Nels Swandal

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
March 13, 2017 (11:48am)

1. Page 21, line 26 through line 28.
Strike: subsection (6) in its entirety

- END -

SENATE JUDICIARY
Exhibit No. 12
Date: 3/14/17
Bill No. HB77

Amendments to House Bill No. 77
3rd Reading Copy

Requested by Representative Randy Brodehl

For the Senate Judiciary Committee

Prepared by Julianne Burkhardt
March 6, 2017 (10:15am)

1. Page 36, line 25.
Strike: "(a)" through "contracts"
Insert: "Contracts"

2. Page 36, line 28 through line 29.
Strike: subsection (b) in its entirety

3. Page 37, line 6 through line 8.
Strike: subsection (c) in its entirety

4. Page 37, line 19.
Strike: "and"

5. Page 37, line 20.
Following: "~~commission~~"
Insert: "; and
(i) cost of the services"

- END -